

(25,467)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 637.

ILLINOIS CENTRAL RAILROAD COMPANY AND YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, AND CANTON, ABERDEEN & NASHVILLE RAILROAD COMPANY AND CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY, THEIR SURETIES, PLAINTIFFS IN ERROR,

vs.

GEORGE R. WILLIAMS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

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a In the Supreme Court of Mississippi, March Term A. D. 1916.

Pleas and proceedings had and done at a regular term of the Supreme Court of Mississippi, begun and held at the Court room in the Capitol, in the City of Jackson, Mississippi, on the 1st Monday, being the 6th day of March A. D. 1916.

Present and presiding Honorable Sydney Smith Chief Justice, Honorable Sam C. Cook, Honorable J. Morgan Stevens, Hon. Clayton D. Potter, Hon. J. B. Holden and Hon. E. O. Sykes Associate Justices, Geo. C. Myers, Clerk of said Court and C. L. Johnson, Marshal.

The following proceedings were had and done in the case of

18401.

ILLINOIS CENTRAL RAILROAD COMPANY et al.,
Versus
GEORGE R. WILLIAMS, To wit:

1 Pleas and proceedings had and done at a regular term of the Circuit Court in and for the first district of Hinds County, Mississippi, begun and held at the courthouse thereof in the city of Jackson, Mississippi, on the 3d Monday of February, 1915, being the 15th day of February, 1915.

Present Hon. W. H. Potter, Judge of the seventh judicial district of the State of Mississippi, and presiding judge of this court; E. S. Middleton, Sheriff; E. D. Fondren, Clerk; C. W. Robinson, Stenographer.

Be it remembered that on the 30th day of March, 1914, there was filed in the office of the Circuit Clerk, a certain declaration, which is in words and figures as follows, to-wit:

In the Circuit Court in and for the First District of Hinds County, Mississippi.

GEORGE R. WILLIAMS, Plaintiff,
vs.

ILLINOIS CENTRAL RAILROAD COMPANY, and the YAZOO and MISSISSIPPI VALLEY RAILROAD COMPANY, Defendants.

Declaration.

1. The plaintiff for cause of action alleges that the defendant Illinois Central Railroad Company is a corporation duly organized under the laws of the State of Illinois.

2. That the defendant the Yazoo and Mississippi Valley Railroad Company is a corporation duly organized under the laws of the State of Mississippi.

3. That the defendant Illinois Central Railroad Company owns and operates a line of Railroad in the States of Nebraska, Iowa, Illinois, Minnesota, Kentucky, Tennessee, Mississippi and Louisiana, and that upon all of said railroad it has at all times for several years last past been and still is engaged in the transportation of persons and property in interstate commerce and has operated all of said railroad as a common carrier for hire engaged in the transportation of persons and property into, through, out of and between all of said states.

4. That the Defendant the Yazoo and Mississippi Valley Railroad Company owns and operates a line of railroad in the States of Louisiana, Mississippi, Tennessee and Arkansas and for several years last past it has been, and still is, engaged in the transportation of persons and property in interstate commerce into, through, out of, between and among all of said States and has been a common carrier for hire engaged in interstate commerce among, into, out of and between all of said states, and that in the State of Tennessee the defendants at all times mentioned in this petition operated certain railroads side-tracks, switch-tracks and terminals jointly in the City of Memphis in the State of Tennessee and that both defendants own railroads, side-tracks, switches, terminals and railroad yards and tracks jointly in the City of Memphis, Tennessee, and have owned the same for several years last past and all of said railroads, tracks, side-tracks, yards, terminals and all of the railroad tracks owned by both defendants in said City of Memphis Tennessee, have been operated by them jointly for several years last past. That as a matter of fact the defendant herein, Illinois Central Railroad Company, is the equitable owner of all said railroads but the separate organizations are kept up and maintained by defendants. That on the 15th day of March, 1913, the plaintiff was employed by the defendants for a certain reward agreed upon by plaintiff and defendants and was so employed by defendants at Memphis in the State of Tennessee, and that at said time and

3 throughout his employment by defendants he was an employee of defendants engaged in assisting them and was assisting them and did assist them in carrying on their business as common carriers for hire transporting persons and property into, through, out of, between and among all of said states. That the car on which plaintiff was working at the time he received the injuries hereinafter stated was a car owned by defendant Illinois Central Railroad Company and which it and the defendant The Mississippi Valley Railroad Company had just transported into said City of Memphis and into the yards of the defendants at said City of Memphis and particularly in the part thereof known as the south yards at Memphis, and that the same had been transported by defendants from some other state than the State of Tennessee, but the exact name of the State plaintiff does not know, but it was a car which was loaded with grain and which defendants were trans-

porting in interstate commerce over said railroads and which they had upon their railroad tracks at Memphis, Tennessee, and which was consigned to the John Wade Company at Memphis, Tennessee, but which it had not yet delivered to the consignee and the same was loaded with grain which the defendants were then transporting in interstate commerce to the said consignee and that the said car had not yet completed its interstate journey. And that the time when plaintiff was working on said car it was being actually used by the defendants in interstate commerce and in transporting grain in interstate commerce from another state and into the State of Tennessee. And that on the 15th day of March, 1913, the plaintiff was working on said car and was working for the defendants thereon and at about the hour of 7:10 P. M. and when it was dark he was working on said car for defendants and was an employe engaged in assisting them in carrying on their business of common carriers for hire engaged in interstate commerce into, through, out of, between and among all of said states and while so assisting the defendants at the time aforesaid in interstate commerce not only in the movement of this car but of many others he was discharging his

4 duty toward defendants and he was working for defendants in their yards at Memphis, Tennessee, and in his said work he went on top of said car in the line of his duty to defendants and in the proper discharge of his duty as such employe and while in the necessary and proper discharge of his duty as aforesaid and while so employed, he took hold of one certain grab iron upon said car and which was on the top of said car and near the side and end thereof, and he took hold of the same for the purpose of sustaining and supporting himself, and the taking hold of said grab iron was a necessary act to be done in doing the work which he was then doing for the defendants and that at said time and for a long time prior thereto the defendants had carelessly, and negligently, and unlawfully kept and maintained said grab iron in a loose, shaky, unsafe, unfastened and insecure condition and in condition where only one end of the said grab iron was bolted or held fast, and in condition, where the other end was loose and not held in place by any bolt or anything else and where it was in a weak, shaky, unsafe and dangerous condition and that said grab iron was in such condition that when it was taken hold of by any person using the same it would give away and fail to sustain or support the person taking hold of it, and the plaintiff took hold of said grab iron to sustain himself as aforesaid and one end of grab iron being in a loose, unfastened, insecure and dangerous condition the same gave way and he was thrown to and fell against the ground, track and rails of the defendants and by being so thrown and falling to the ground as aforesaid he was struck, crushed, bruised and injured, and sustained the following injuries, to-wit: He was struck on the right side of his head and face and the said right side was crushed, bruised and injured; that his back was crushed, bruised, torn and injured and that his sides were crushed, bruised and injured and that his hips were crushed, bruised and injured and his entire nervous system was shocked and impaired and he was rendered

unconscious and compelled to spend three weeks in a hospital; that by reason of said injuries the plaintiff has ever since been and ever will be sick, crippled, lame, weak, emaciated and diseased;

- that by reason of said injuries the plaintiff has endured great
5 ner-ousness, pain, anguish and suffering; that by reason
of said injuries the plaintiff ever will endure nervousness,
pain, anguish and suffering; that by reason of said injuries the
plaintiff's health has been permanently impaired and that by reason
of said injuries he will be forever sick, lame, weak, unhealthy,
nervous and diseased. That by reason of said injuries he is unable
to perform work or labor and unable to walk without the assistance
of a cane and constantly endures terrific pain in walking and that
his ability to walk has been practically destroyed by reason of said
injuries. That by reason of said injuries he has been rendered
sleepless and ever will be sleepless; that by reason of said injuries his
appetite has been permanently impaired and his stomach rendered
weak and unsettled and in such a condition that he suffers from
vomiting; that it was the duty of the defendants to have said grab
iron on said car fastened and to have the same in a safe, boltea and
fastened condition and in condition where it would sustain and sup-
port the weight of a man and in condition where it would have
held and sustained and supported this plaintiff when he took hold
of it, but at said time and for a long time prior thereto the defend-
ants unlawfully, carelessly and negligently kept said grab iron in
an unsafe, loose, insecure, unfastened, negligent and dangerous
condition and in condition where it would give way and fail to
sustain any employee of defendants who used it or tried to use it
and in condition where it was liable to cause the loss of life, limb
and health of any employee who used it to sustain or support him-
self to any extent, that said defective condition was known to def-
endants or could have been discovered by reasonable diligence, but
was unknown to plaintiff, and that plaintiff took hold of said grab
iron in an entirely proper and careful manner and attempted to
use the same in a proper and careful manner to aid in sustaining
his weight and that a safe, well-fastened and firm grab iron
6 was a necessity upon the roof of said car in the place where
said grab iron was in the aforesaid unlawful, negligent and
dangerous condition and that the defendants unlawfully and negli-
gently failed to keep said grab iron in a safe, bolted or fastened
condition. That the plaintiff sustained all of said injuries without
fault or negligence on his part; that by reasons of said injuries the
plaintiff has been unable to perform any work or labor since sustain-
ing said injuries, to his damage by reason of the loss of his wages
alone up to this time in the sum of Fourteen Hundred Dollars; that
he has necessarily expended the sum of three hundred dollars in en-
deavoring to effect a cure of said injuries but has effected no cure
thereof and as a result of said injuries this plaintiff is a hopeless and
helpless invalid; that by reason of said injuries the plaintiff has sus-
tained damages in the sum of Forty Thousand Dollars and all of said
sum is now justly due him from the defendants and no part thereof
has been paid; and that the railroad on which the plaintiff was then

working for the defendants was a part of their unified and continuous line of interstate railroads.

5. That part of said railroads of both of the defendants is situated within Hinds County, Mississippi, and within the First District of said Hinds County, and that during the years 1913 and 1914 the defendants owned and operated both of their said railroads within the first District of said Hinds County, Mississippi, as part of the aforesaid Interstate Railroads. That it was the duty of the defendants at all times when using said cars to have a ladder on the side thereof and this it did have and the same was used by the plaintiff in the discharge of his aforesaid duty, and at said time it was the further duty of the defendants to have upon and keep and maintain upon the roof of said car at the place where said unsafe, insufficient and dangerous grab iron and hand hold was, a secure hand hold, or grab iron, but this the defendants carelessly, negligently and unlawfully failed to have and by reason of the

7 aforesaid carelessness, negligence and unlawful acts of commission and omission hereinbefore mentioned by defendants the plaintiff sustained the said injuries and damages and sustained the same without fault or negligence on his part.

Wherefore, the plaintiff prays judgment against the defendants for the sum of Forty Thousand Dollars and costs of suit.

M. F. HARRINGTON,
WATKINS AND WATKINS,
Attorneys for Plaintiff.

Filed March 30th, 1914. E. D. Fondren, Clerk; J. P. Cadwallader, D. C.

8 In the Circuit Court of the First District of Hinds County, Mississippi.

No. 2675.

GEORGE R. WILLIAMS

vs.

I. C. R. R. Co. et al.

Comes the defendants by attorneys, Wells, May and Sanders. and defends the wrongs and injuries of which the plaintiff hath complained in the declaration herein, and for such plea in this behalf says, that they are not guilty of wrongs and injuries complained of, nor any part thereof, and of this it puts itself upon the country.

WELLS, MAY AND SANDERS,
Attorneys for Defendants.

Filed September, 14th, 1914. E. D. Fondren, Clerk, J. P. Cadwallader, D. C.

9 In the Circuit Court, September Term, 1914.

STATE OF MISSISSIPPI,
County of Hinds, First District:

GEORGE R. WILLIAMS, Plaintiff,

VS.

YAZOO and MISSISSIPPI VALLEY RAILROAD COMPANY, Defendant.

Special Plea in Bar.

And for a further plea to the declaration exhibited against it herein said defendant says that said plaintiff ought not to have and maintain his aforesaid action, because:

At the time said plaintiff entered the service of said defendant company, and a long time prior to the date of the supposed injury complained of, said plaintiff voluntarily entered into and executed a written contract with said defendant whereby said plaintiff specially agreed to assume and did assume all the risk and dangers of injury from the alleged defect in defendant's instrumentalities maintained and described in plaintiff's declaration herein as forming the basis of plaintiff's complaint against said defendant, said contract having been printed on a form promulgated by the Illinois Central Railroad Company being signed on behalf of said defendant by W. L. Park, Vice President and General Manager of said defendant company, and having been delivered by said plaintiff to said defendant with his written application for employment filed with said defendant on the 9th day of January, 1913, and which said contract is herewith filed as a part of this plea as if fully copied in words and figures herein, hereto attached and marked Exhibit "A."

All of which matters and things said defendant is ready to verify.

WELLS, MAY AND SANDERS,

Attorneys for Defendant.

Filed October, 16th, 1914. E. D. Fondren, Clerk, J. P. Cadwallader, D. C.

10

EXHIBIT "A."

Illinois Central Railroad Company.

Office of Vice President and General Manager.

CHICAGO, July 1st, 1910.

All employees of this company, and all entering its service, are required to take notice that in the service of the Company they are liable to meet and be called upon to work with cars, the latter rungs and brake rods on which are liable by wear and use to become loose, and to draw out in using them; cars so loaded that the load will pro-

ject over the ends, and therefore be especially hazardous in coupling *are* uncoupling; engine tenders unequipped with platform or step along the side or at the rear thereof; engine tenders unequipped with any appliance to hold on to on the side or in the rear; and all other kinds and description of cars; engines, machinery and appliances usually used or to be found on railroads in the United States including the coupling of engines, cars or tenders. And all such persons are further required to take notice that in the service of this company they may be required to work on mixed trains made up of freight and passenger cars; also on freight and passenger cars equipped with inside brakes, and with wheels very close to the ends of the cars; that in the service of the company flying switches are made; and that some times defective cars and engines are drawn in the company's trains in order to get them to stations where they can be repaired; all of which necessarily exposes persons in the employ of the company to great danger of personal^y injury. That rails used in the company's tracks, and especially in its side tracks, often become worn and splintered and rough, exposing employees to great danger and requiring the highest degree of care.

All such persons are further required to take notice that they are hired and retained in the employ of the company on the understanding that if they work for the company they must assume all risks run by them in working with the engines, tenders, cars, machinery and appliances and tracks hereinbefore particularly mentioned, and in addition assume all other risks usually incident to the position in which they may be placed in the company's service.

It is further understood that employees entering or remaining in the company's service, will, as agents of the company and for their personal^y safety, before they attempt to make couplings or to uncouple while in its employ, examine and see that the cars or engines to be uncoupled or coupled, couplers, drawheads and other appliances connected therewith, the ties, rails, tracks and roadbeds, are in good safe condition, and that the cars are so loaded that such work may be safely done, and that they will diligently examine all cars, engines, machinery and appliances with which they may be called upon to work, and promptly report to the proper officers all defects therein, and not work on *are* about the same until such defects are remedied, except in removing defective cars or engines as before mentioned and if they do so, it shall be at their own risk exclusively.

Employees are forbidden to get on the front of engines or cars which are reproaching; a mis-step or fall must result in personal injuries.

Employees are forbidden to ride with feet on brake beams or oil boxes.

They must exercise great care in coupling and uncoupling cars; they will take time to see that the coupling appliances are in proper place and shape and in good order; and in coupling foreign cars; *are* cars loaded with material that projects from the ends of the cars, they must use special care to prevent injuries to themselves and under no circumstances must they undertake to make a coupling when both

cars are in motion. Employees must not line up draw-bars either with feet or hands, nor attempt to uncouple by hand while cars are in motion, nor walk in advance of a moving car for the purpose of opening knuckles.

12 In all cases sufficient time must be taken to avoid accident or personal injury.

In coupling or uncoupling there is a liability to get the foot caught in switch-frogs and lead and guard rails which are unfilled, and under brake heads or beams when hung to the bodies of cars or under the wheels, and it is dangerous to stand on the inner side of a curve to couple cars.

The attention of employees is also specially called to the necessity for care on account of the icy and sleety condition of cars in winter; of the unevenness of ground where couplings are to be made; of the inequalities of surface between and at the ends of ties and arising from deposits of cinders, coal, or other material on the ground.

They are forbidden to work on the side of cars or trains where there are buildings, sheds, chutes, or other projecting structures, and must always work on that side where there are no buildings or structures, and in getting on or off, or riding on the side of moving cars to do so only at places where there are no obstructions along side the tracks, such as buildings, structures, sides of bridges, lumber piles or any other obstructions that will make such work hazardous.

They are forbidden to stand in an upright position on the top of cars when passing overhead structures, bridges or through tunnels, and they must care to protect themselves from injury at such places. They are informed that there are such places or structures where they are required to work and *argue* that they will thoroughly familiarize themselves with their location and assume the risk of being struck or injured by them.

The company makes this statement to its employees to call their attention as definitely as possible to the risk of the service in which they are engaged, so that if they are not willing to serve, taking the risk exclusively on themselves, they may, by no misunderstanding, enter into or remain in the company's employ. And employees will further bear in mind that no one in the service of the company, except the general superintendents, the superintendent, the

13 Master Machanic, or Train Master of the District, has any authority to order another to work with any engine, car, machinery or appliance which is in a defective or dangerous condition, except in moving defective or dangerous cars or engines as before mentioned, and that all employees must refuse to obey any such unauthorized order, and if they act on any such unauthorized order, it will be at their own risk exclusively, and in no event will the Company be liable for the consequences thereof. The Company desires to protect its employees from injury, and is compelled to rely on their care and diligence to accomplish that purpose, and must insist upon the observance of the stipulations and directions herein contained, and all other rules hereafter made for the conduct of the Company's business.

To evidence the understanding herein expressed, an agreement

has been prepared which is hereto annexed, and which employes will be required to sign.

W. L. PARK,
Vice-President and Gen'l Manager.

I, the undersigned, being employed as switchman by the Illinois Central Railroad Company, hereby acknowledge that I have been made acquainted with the contents of the foregoing statement signed by W. L. Park, Vice-President and General Manager of said Company, and understand the same, and have received a copy thereof, and the risks and dangers incident to my employment have been fully explained to me, and in consideration of my employment by said Company I hereby agree to assume all risks of the service of said company, and to obey all the rules to which my attention is called in the foregoing notice, as well as all other rules now in force or that may be made by said Company for the government of its employes, and that I will save said Company harmless from all liability for injury that may come to me because of any such risks, whether the same arises in whole or part, from acts or omissions of my co-employees in the same branch of the service, or employees who are in a different branch of the service, or from those not so employed, or in consequence of any failure or neglect on my part to obey the directions contained in said notice, or any of the rules now or hereafter made by the Company for government of its employes as aforesaid.

I was born on the 9th day of October, 1889.

G. R. WILLIAMS.

Each employee signing this agreement must be furnished with a copy, to keep in his own possession.

Filed October 16th, 1914. E. D. Fondren, Clerk. J. P. Cadwallader, D. C.

15 In the Circuit Court of the First Judicial District of Hinds County, Mississippi.

GEO. R. WILLIAMS, Plaintiff,
vs.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY, Defendant.

Demurrer to Special Plea.

Now comes Geo. R. Williams, plaintiff, in above styled cause, and demurs to defendant's special plea in bar, and for grounds of demurrer shows to the court:

1. Said plea is insufficient in law.
2. Other grounds to be assigned at the hearing.

WATKINS AND WATKINS,
Att'ys for Plaintiff.

Filed Feb'y 22, 1915. E. D. Fondren, Clerk.

GEO. R. WILLIAMS

vs.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY.

This day this cause coming on to be heard on demurrer of plaintiff to defendant's special plea in bar, and the court having heard and considered the same, the same is hereby sustained.

February 22, 1915.

M. B. 16, page 97.

Motion and Affidavit for Security for Costs.

GEO. R. WILLIAMS

vs.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY et al.

Comes defendant, by attorneys, and moves the court to require the plaintiff to give security for costs, for the reason set out in the affidavit filed in support of this motion.

WELLS, MAY AND SANDERS,
Attorneys for Defendant.

In the Circuit Court of Hinds County, Mississippi.

GEO. R. WILLIAMS

vs.

YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY et al.

Personally appeared before me the undersigned Clerk of the Circuit Court of said county, Ben H. Wells, Attorney for defendant and makes oath that he has good reason to believe and does believe, that the plaintiff in the above styled cause, cannot be made to pay the costs, in case same shall be adjudged plaintiff and affiant states that the defendant has as he believes, a meritorious defense and that this affidavit is not made for delay.

BEN H. WELLS.

Sworn to and subscribed before me, this 20th day of October, 1914.

E. D. FONDREN, *Clerk.*

In the Circuit Court of the First District of Hinds County,
State of Mississippi.

GEORGE R. WILLIAMS

vs.

ILLINOIS CENTRAL RAILROAD COMPANY et al.

We, George Williams, principal, and the Fidelity and Deposit Company of Maryland, surety, hold ourselves bound unto the Illi-

nois Central Railroad Company and the Yazoo and Mississippi Valley Railroad Company in the sum of One Hundred Dollars (\$100) for the payment of which we bind ourselves, our heirs and assigns well and truly to pay.

The condition of the foregoing obligation is that, whereas, the said George Williams has a suit pending against the Illinois Central Railroad Company and the Yazoo and Mississippi Valley Railroad Company, and he is required to give security for costs. Now, therefore, if the said Geo. Williams shall pay and satisfy such judgment for costs as may be rendered against him in the above styled cause, if any, then this obligation to become forever void. Otherwise to remain in full force and effect.

Witness our signatures this the 23rd day of February, 1915.

GEO. R. WILLIAMS,
W. H. WATKINS, *Att'y, Principal.*
FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
By H. V. WATKINS, *Attorney in Fact.*
J. C. HOOD, *Agent, Surety.*

Approved this 23rd day of February, 1915.

E. D. FONDREN, *Clerk.*

Filed Feb. 23rd, 1915. E. D. Fondren, Clerk.

19 STATE OF MISSISSIPPI,
Hinds County, First District.

In the Circuit Court, February Term, 1915.

No. 2675.

GEORGE WILLIAMS
vs.

ILLINOIS CENTRAL RAILROAD COMPANY and YAZOO AND MISSISSIPPI
VALLEY RAILROAD COMPANY.

Be it remembered that heretofore, to-wit, on Monday the 22nd day of February, 1915, being one of the Judicial days of the February Term 1915 of the Circuit Court of Hinds County, Mississippi, First District, this cause came on to be heard before Honorable W. H. Potter, Judge of said Court, and a jury in said court, whereupon the following testimony was taken and proceedings had in due form of law, Hon. M. F. Harrington, Messrs. Watkins and Watkins, appearing for the plaintiff; Messrs. Wells, May and Sanders, appearing for the defendant.

Whereupon the plaintiff, to maintain the issue on his behalf, offered the following testimony, to-wit:

20 In the District Court of the United States for the District of Nebraska, Omaha Division.

GEORGE R. WILLIAMS, Plaintiff,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, Defendant.

Depositions of sundry witnesses taken before me, L. H. Graves, a Notary Public in and for Shelby County, Tennessee, the 16th day of August, 1913, in a case now pending in the District Court of the United States for the District of Nebraska, Omaha Division, wherein Geo. R. Williams is plaintiff and the Illinois Central Railroad Company is Defendant, and the said depositions are taken pursuant to the annexed notice, M. F. Harrington appearing for the complainant and F. H. Helsell for the defendant.

E. A. LEE, being duly cautioned and solemnly sworn was examined and testified as follows:

Direct examination by Mr. Harrington:

Q. What is your name?

A. E. A. Lee.

Q. Where do you live, your place of residence?

A. 260 Simpson Avenue.

Q. What City?

A. Memphis.

Q. What State?

A. Tennessee.

Q. How long have you lived in Memphis?

A. Sixteen years.

Q. What is your occupation?—Employment?

A. Telegrapher.

Q. Do you know the Railroad Yards of the Illinois Central in Memphis.

21 A. Well, not so well.

Q. Do you know the tracks over which trains are being run through the City of Memphis?

A. Yes sir.

Q. Are you in the Dispatcher's office, which directs the movements of trains?

A. No sir, only in the yard office.

Q. Which directs the movements of these trains?

A. We clear all the freight trains which leave from the Illinois Central yards in Memphis.

Q. This is done through this office you work in?

A. Yes sir.

Q. Are you acquainted with the plaintiff in this case, Geo. R. Williams?

A. Yes sir.

Q. How long have you known him?

A. Well, I would not say exactly, it probably has been I do not

now when he came to my house, probably eight or nine months, probably longer.

Q. Did he room at your place?

A. Yes sir.

Q. Last winter?

A. Yes sir.

Q. Did you learn something of him receiving an injury along last March?

A. Yes sir, I went to the hospital to see him after he was injured.

Q. Can you recall the date, you saw him in the hospital?

A. Well, it was either the 15th or 16th of March.

Q. Did you learn anything of any car on which it was claimed he was injured?

Mr. Helsell: The question and answer is objected to because it is hearsay and calling for testimony based on hearsay evidence.

22 A. Yes sir.

Q. Did you examine any part of the Illinois Central Railroad on or about the 16th day of March last.

A. Yes sir.

Q. You may state, if you know, what the number of that car was.

A. It was No. 131704.

Q. Was it a passenger or freight car?

A. A freight car.

Q. Do you know whether it was empty or loaded?

A. I do not know, sir.

Mr. Helsell: We move to strike out the testimony of witness having reference to that car for the reason that it is hearsay and calling for testimony based on hearsay evidence.

Q. What time of the day on the 16th day of March last did you say that car?

Mr. Halsell: Objected to as being hearsay and calling for testimony based on hearsay evidence.

A. I could not say exactly, probably ten thirty or eleven thirty in the morning.

Q. Was it a flat car or a box car?

Mr. Helsell: Objected to as being hearsay and calling for testimony based on hearsay evidence.

A. It was a box car.

Q. Did you find it yourself, or did any — point it out to you?

Mr. Helsell: Objected to as being hearsay and calling for hearsay evidence.

A. I found it myself.

Q. What information had you as to the Number of the car that enabled you to find it? Or did you have any particular information as to its number?

A. I had no information at all as to the number, only its location.

23 Q. Where was it located at the time you found it?

Mr. Helsell: Objected to for the reason that it is hearsay and based on hearsay evidence.

A. It was located on the south end of track No. 21.

Q. Where is this track No. 21 of the Illinois Central Railroad. Is it in the City of Memphis, and if not where?

A. It is in the South Yards of the City of Memphis.

Mr. Helsell: We move to strike out the answer as no foundation has been laid to show by this witness that he had any personal knowledge as to the ownership of the said yards.

Q. What cars, if any, were between this car and the south end of track No. 21 in the yards used by the Illinois Central Railroad here in Memphis?

Mr. Helsell: Objected to as immaterial and as calling for evidence based on what is affirmatively shown as hearsay testimony.

A. There were two or three gondolas.

Q. And what cars, if any, were north of this box car?

A. I could not tell you—I didn't go north—didn't take any particular notice. I remember there were three gondolas as I passed them, two or three.

Q. Down at that point you have the main line used by the Illinois Central at Memphis, have you?

A. Yes sir.

Q. How are those tracks you mentioned down there, which side are they on of the Illinois Central Main line?

Mr. Helsell: Objected to as *as* assuming that this is the Illinois Central Railroad at all, and assuming a knowledge on the part of the witness that has not been shown; no proper foundation has been laid for the question and there is not any proof of ownership of said railroad, or tracks or roadbed, the foundation has not been laid for any such evidence.

24 A. On the West side.

Q. And are these said tracks in the yards there connected, or not connected by switches with the Illinois Central main line of railroad that is being used through the City of Memphis?

Mr. Helsell: Objected to as assuming that this is the Illinois Central at all, and assuming a knowledge on the part of the witness that has not been shown; no proper foundation having been laid for the question and there is not any proof of ownership of said railroad, or track or roadbed, and no foundation has been laid for any such evidence.

A. They are connected the same as all railroad yards, beginning with track No. 1, up to the highest number in the yards.

Q. Did you make any examination of this box car that you have

been speaking of along about ten o'clock in the forenoon of the 16th of March last?

Mr. Hellsell: Objected to as being immaterial and based upon hearsay testimony.

A. Yes.

Q. State what examination you made of the car?

Mr. Hellsell: Objected to as being immaterial and based upon hearsay testimony.

A. I climbed down the car and found at the North end of the hand hold was loose. I only made an examination to see that the North end of the hand-hold was loose.

Q. You examined the car at the North end?

A. Yes sir, at the North end.

Q. What particular part of the North end?

A. I only climbed up and looked in at it—only the hand-hold and saw it loose.

Mr. Hellsell: Objected to as being immaterial and based on hearsay testimony.

25 Q. What particular end of the look-out on the north end of the car?

A. On the roof, the hand-hold.

Mr. Hellsell: Objected to as being immaterial and based on hearsay testimony.

Q. Was that on the east side or the west side?

A. East side.

Mr. Hellsell: Objected to as being immaterial and based on hearsay testimony.

Q. And what condition did you find this hand-hold to be in?

A. The north end of the hand-hold was loose.

Mr. Hellsell: Objected to as being immaterial and based upon hearsay testimony.

Q. What do you mean by saying that it was loose?

Mr. Hellsell: Objected to as being immaterial and based upon hearsay testimony.

A. The bolts or lag screws that fastened it had pulled out.

Q. Out of both ends, or only one end?

Mr. Hellsell: Objected to as being immaterial and based on hearsay testimony.

A. Only one end—the north end.

Cross-examination by Mr. Hellsell:

Q. Do you remember any more definitely than you have stated when Mr. Williams first started to board with you?

A. No sir, I do not, but I have in my mind about six months before he was injured—I never paid any attention to the date of his arrival.

26 Q. You have spoken of being injured, do you personally know any thing at all about how he was injured, if he was injured except what he told you.

A. No sir.

Q. It was about what time of day on Sunday, as I understand you correctly, that you looked at this particular car that you speak about?

A. It was between ten thirty and eleven thirty in the morning.

Q. You only looked for a broken hand-hold on top of one car?

A. That is all.

Q. Whether or not Mr. Williams was ever on top of that car, or attempted to hold to that hand-hold, or grab-iron, you personally know nothing about it, except what he told you?

A. That is all.

Q. You have spoken about the yard down there, naturally you know nothing about the ownership of those tracks of those yards do you?

A. Nothing at all.

Q. The Yazoo and Mississippi Valley Railroad Company uses the same tracks?

A. Yes sir.

Q. And you, of course, do not know which one owns the tracks?

A. I do not.

Q. You do not know, either, which track that car came in on from the south or north?

A. No sir, I do not.

Q. And you know nothing about how long that car had been there?

A. No sir.

Q. Or how long that hand-hold was loose at one end?

— No sir.

27 Q. Do you know how the hand hold was fastened to the car that was loose?

A. I do not know—I do not know whether the grab-iron was fastened with bolts or lag screws—I could not state positively.

And further respondent say-th not.

The next witness, JOHN M. MCGINNIS, being duly cautioned and sworn was examined and testified as follows:

Direct examination by Mr. Harrington:

Q. What is your name?

A. John M. McGinnis.

Q. Where do you live?

A. 273 Edith Place.

Q. In what City?

A. Memphis.

Q. What State?

A. Tennessee.

Q. How long have you lived in Memphis?

A. I have lived here all my life off and on.

Q. And what is your business or occupation?

A. Switching at present.

Q. Do you know the lines over which the Illinois Central runs its trains and cars and engines through Memphis?

A. Yes sir.

Q. Do you know the side tracks and yards that that Company uses in Memphis?

A. Yes sir.

Q. How long have you known these tracks and yards.

A. Fifteen years.

28 Q. Have you worked on these tracks and yards to some extent?

A. Yes sir, three or four times.

Q. Are you generally acquainted with the main line of the Illinois Central from Chicago to New Orleans?

Mr. Halsell: Objected to as calling for a conclusion of the witness and no foundation as to his knowledge shown and is immaterial, irrelevant and incompetent.

A. Yes sir.

Q. How far North have you been in your time over the Illinois Central Railroad?

Mr. Halsell: Objected to as being immaterial, incompetent and irrelevant and assuming the fact that the road belongs to the Illinois Central.

A. I have been to Chicago, Paducah, Louisville and Mounds.

Q. How far North over the Illinois Central have you been?

Mr. Halsell: Objected to as assuming the fact that the road belongs to the Illinois Central and as being immaterial, irrelevant and incompetent.

A. I have been to New Orleans over the I. C. Only.

Q. Now, referring to the line of railroad you have been over the Illinois Central from Chicago to New Orleans, does it or not run right through the City of Memphis?

Mr. Halsell: Objected to as assuming a fact not in evidence.

A. The I. C. starts at Poplar street and runs through town to East Junction—South Yard.

Q. It is all the Illinois Central, you mean?

29 A. The Y. and M. V. run joint-y from Poplar St. to the Y. & M. V. Junction at South Yard.

Q. You mean both roads use the same tracks?

Mr. Halsell: Objected to as assuming a fact not in evidence.

A. The I. C. have no yards except North of Poplar St. the Y. & M. V. have the yards south of Poplar St.

Q. You do not know anything of that personally do you?

A. No sir, but I have heard it all my life—we are working for the Y. & M. V. here in the yards.

Q. You are paid in the South yards by the Yazoo and Mississippi Railroad Company?

A. Yes sir.

Q. Talking of the yards, North and South, in Memphis, do Illinois Central engines run over them right along or not?

A. All the engines for the I. C.

Mr. Halsell: Objected to as assuming a fact not in evidence.

Q. What engines with letter on them, what engines are used to haul freight and passenger trains and do switching in all railroad yards in the City of Memphis?

Mr. Halsell: Objected — as immaterial and irrelevant and incompetent and assuming a fact not in evidence.

A. I. C.

Q. Did you ever see an engine of the Yazoo and Mississippi Valley Railroad operated in one of these yards in the City of Memphis?

A. Yes sir.

Q. How long ago was that?

A. There are some there now.

Q. What are they doing *hrere*?

30 A. Pulling trains on the Valley.

Q. On the main line you mean?

A. Yes sir.

Q. Do they do any switching?

A. Sometimes, in a case on emergency.

Q. What company—what initials are on the switch engines that have been used in these yards you have been speaking about? Both North and South Memphis as long as you have known the yards?

Mr. Halsell: Objected to as immaterial, irrelevant and incompetent and assuming a fact not in evidence.

A. I have not paid any particular attention to the yard engines the most I remember were I. C.

Q. Did you ever see a switch engine on these yards except an Illinois Central engine?

Mr. Halsell: Objected to as immaterial, irrelevant and incompetent and assuming a fact not in evidence.

A. I would not answer that—I do not know.

Q. Do you ever remember ever seeing any switch engine except the Illinois Central on these yards?

Mr. Halsell: Objected to as calling for a conclusion of the witness and no foundation as to his knowledge shown.

A. I could not answer that—I am not positive about that.

Q. Where are these South Yards you speak of in Memphis? With reference to the main line used by the Illinois Central Railroad from Chicago to New Orleans?

31 Mr. Halsell: Objected to as assuming a fact and asking a question of witness that he has not shown his competency to answer, it is, therefore, irrelevant and immaterial.

A. The South yards lie between Iowa and Trigg Sts.

Q. Where are they with reference to the main line tracks used by the Illinois Central between Chicago and New Orleans?

Mr. Halsell: Objected to as assuming a fact and asking a question that witness has not shown his competency to answer and is irrelevant, incompetent and immaterial.

A. The South yards are right west of the I. C. Tracks.

Q. Are these tracks constituting the south yard, connected with the main line used by the Illinois Central Railroad between Chicago and New Orleans?

Mr. Halsell: Objected to as assuming a fact and asking a question of witness that he has not shown his competency to answer and is irrelevant, incompetent and immaterial.

A. Yes sir, all tracks connect with the main line.

Q. In all the work done with Illinois Central cars in South Memphis what yards are they switched on?

Mr. Halsell: Objected to as assuming a fact and asking a question of witness that — has not shown his competency to answer and is irrelevant, incompetent and immaterial.

A. The Valley from the best I hear of it.

Q. Are these the same yards you have been speaking of?

A. Yes sir, South Yards. I have been told for the last fifteen years that the I. C. owns nothing but the North Yards and the Y. & M. V. owns from Poplar Street South.

32 Q. I will ask you whether or not the Illinois Central so long as you have known anything about these yards have operated and switched cars and runs its engines on all the tracks in these so-called South Yards?

Mr. Halsell: Objected to as assuming a fact and asking a question of witness that he has not shown his competency to answer and is irrelevant, incompetent and immaterial.

A. Yes sir, the I. C. and Y. & M. V. both run over them.

Q. What are these south yards used for, freight or passenger trains, or both?

A. Busting up trains and storing cars.

Q. Who uses them to "bust" up trains as you called it?

A. Trains we have to run out of there goes over the Valley, all but one local and one or two extras, they go over the I. C. down to Grenada—the rest run over the Valley.

Q. That is what they call the Valley?

A. Yes sir.

Q. Where do the cars come from that you call the Y. & M. V.? when busting trains to go south?

Mr. Halsell: Objected to calling for ownership not shown and immaterial and irrelevant.

A. Do you mean the name of the cars?

Q. Yes?

A. All cars in the world.

Q. What are the name of the cars?

Mr. Halsell: Objected to as calling for ownership not shown and immaterial and irrelevant and immaterial.

A. I never took any notice to see what road had the most cars there.

33 Q. Along about the fifteenth of March last did you see an Illinois Central Railroad car known by the number and having on it the number 131704?

Mr. Halsell: Objected to as assuming an ownership of the car and assuming evidence that does not exist, asking questions of witness about which he has not shown his competency to testify and no foundation having been laid for the evidence.

A. No sir, I do not remember it—I remember the car you speak of, but do not remember the number never took it.

Q. As a *matre* of fact you knew the number the next day didn't you?

A. No sir.

Q. Didn't you tell me what the number was?

A. No sir.

Mr. Halsell: We object to the cross-examination of his own witness and submit he is not justified in any way by the conduct of this party who is answering frankly.

A. You gave a number and asked me if that was the same and I said I believe it was, but I would not be positive.

Q. Didn't you tell when Williams was injured that you remembered the number of the car?

A. No sir. When they said it was a car of grain for John Wade they told me the car's grab iron had torn off one end.

Q. You were summoned by the claim agent's office of the Illinois Central to be here at 8 o'clock this morning?

A. Yes sir.

Q. The claim agent talked to you at that time?

A. No sir, the claim agent said "good morning."

Q. He was there?

34 A. He came in about two minutes after I came up there.
Q. He sent for you didn't he?

A. He sent a messenger down to me yesterday to come up here.

Q. Who talked to you about it?

A. That gentleman (pointing.)

Q. Mr. Halsell?

A. Yes sir.

Q. Do you still work for this company in the yards at Memphis?

A. Yes sir.

Q. Now, on the evening of the 15th of March, 1913, was your

attention directed to the hand-hold on any car of the Illinois Central?

Mr. Halsell: Objected to as assuming it being a car of the Illinois Central and no foundation for it and no competency of the witness shown to testify to that fact, and which assumes it in the question.

A. I remember the date, but do not remember the day of the month or week that it was.

Q. Do you remember the day on which Mr. Williams was hurt?

Mr. Halsell: Objected to as assuming the fact that he was injured.

A. I remember coming in the next morning and the foreman I worked for told me he was hurt.

Mr. Halsell: We move to strike out as hearsay all as to what the foreman told him.

Q. You remember hearing that Mr. Williams was injured?

Mr. Halsell: Objected to as assuming the fact that he was injured.

35 A. Yes sir, the next morning at about 11 or 12 o'clock.
Q. The evening before that morning when you heard of him being injured, had your attention been directed by any one to the hand-hold of any car?

Mr. Halsell: Objected to as assuming the fact of ownership and no foundation for it and the witness' competency is not shown.

A. I am not positive whether it was the evening before or that evening that I was told about it.

Q. What was the name or initials on the car that you noticed the condition of the condition of the hand hold?

A. I. C.

Q. What time was it that you saw it?

A. I do not know I never took out my watch to look at it.

Q. What time did you begin to work that evening?

A. 7 o'clock.

Q. How long had you been at work when you noticed the hand hold?

A. I reckon 10 or 10-30 at night—I perhaps found it out 9:30.

Q. Where was the car at that time?

A. I found it when they threw it out at the "hold" track up the lead at Nonconnah.

Q. When you first saw the car was it in the City of Memphis?

A. No sir, it was at Nonconnah.

Q. How far is that from Memphis?

A. About five or six miles south.

Q. South of Memphis?

A. Yes sir.

Q. Is that on what is known as the main line of the Illinois Central Railroad?

Mr. Halsell: Objected to as immaterial and calling for a conclusion of the witness.

36 A. It lies between the main line of the Valley and the main line of the I. C.

Q. And that was on either the 14th or 15th of March?

A. This is close to the time Williams got hurt.

Q. Do you know what it was loaded with?

A. No sir, John Wade handles corn, wheat, flour and hay. Don't know what it was loaded with. He always has his cars carded with "E."

Mr. Helsell: We move that the answer be stricken out as immaterial and mere conclusion on the part of the witness not responsive and for the reason that it is hearsay.

Q. What, if any carding was on the car you saw at Nonconah?

A. It was carded "E."

Q. What did you observe as to the condition of the hand hold on this car carded "E?"

Mr. Helsell: We move that the question and answer be stricken out unless the car is identified with other testimony, as immaterial.

A. I pulled it out of a track and kicked it up another track and found the grab iron loose on one end.

Q. Which end was it?

A. The east end at that point.

Q. And as the car would come into Memphis, what end?

A. North end.

Q. Do you know to whom the car was assigned?

A. According to the car it was assigned to John Wade.

Mr. Helsell: Objected to as not the best evidence and a conclusion of the witness.

Q. How far did you help to move that car?

37 A. From Nonconah to South Yards at McLemore Ave.

Q. McLemore Ave. is where?

A. In Memphis.

Q. Do you remember where this car with the loose hand hold was at the time you last saw it?

Mr. Helsell: Objected to as not the best evidence and calling for a conclusion of the witness.

A. I got off at McLemore Ave. pulled through a track, got on another engine and came back to south yards, it was headed into a track towards Iowa Ave. on the west side.

Q. Do you know the number of the track it was headed into?

A. No sir, because the hind man always got off at the crossing to arrange for the engine to come back.

Q. Do you know who the end man was?

A. Yes sir—me—I was riding the end, Dick Nethercott was riding the engine.

Q. Was this a flat car or a box car?

A. It was a box car.

Q. This loose hand hold you say was on the North end of the car as it came into Memphis?

A. It was on the roof—the roof grab iron.

Q. And on the East or West side of the roof as the car faces north in Memphis?

A. East side.

Q. What persons, if any, had their cars carded "E"—that is cars that came into the Memphis yards?

A. John Wade.

Q. Is that John Wade, or John Wade and Sons?

A. John Wade and Sons, I suppose—all I know is John Wade.

Q. What business is John Wade, or John Wade and Sons in?

Mr. Helsell: Objected to as immaterial.

38 A. Elevator business.

Q. And where is this elevator, known as the "Wade Elevator" in Memphis?

A. Right north of Iowa Ave.

Q. How long has the elevator been in use?

A. I don't know it has been in use ever since I have been here.

Q. From what railroad does grain go to that elevator?

A. Every road in Memphis.

Q. Are there side tracks that run into it?

A. Spur tracks like all elevators to do the switching with.

Q. What main line do you get to those Wade Elevator switches from?

A. I. C.

Q. Is that the Illinois Central?

A. Yes sir, and the Y. & M. V. run joint there is the best I know—the best I can get out of it.

Q. Is there any other main line used by the Y. & M. V. as you call it, except the train line used by the Illinois Central from all of its fast trains from Chicago to New Orleans?

Mr. Helsell: Objected to as assuming the fact of ownership and no foundation for it and the witnesses' competency is not shown.

A. I have always heard by every body that they run joint from Poplar Street to the South Yards.

Q. Does the Yazoo & Miss. Valley run any trains over any main line in Memphis except the main line tracks used by the Illinois Central from Chicago, Ill., for all other trains to New Orleans, La.?

Mr. Helsell: Objected to as immaterial and no foundation is laid for the knowledge of this testimony and from its face it would require certain and definite knowledge which is not given.

39 A. This is the only main line through the terminals—got but one main line.

Q. What direction are the Wade tracks, going by the Wade Elevator, from this main line used by the Illinois Central for their through trains to New Orleans?

A. You have to get off the main line and cross over to the Wade spur.

Q. Which side are they on of this main line?

A. West.

Q. Is there any main line over which cars can be hauled North or South and go to the Wade tracks, except the lines used by the Illinois Central for their through trains from Chicago to New Orleans?

A. No sir.

Q. Down at Nonconnah, as long as you have known, has or has not the Illinois Central had any car repairers, or are these cars run from that point without inspection?

A. Yes sir, they have got two shops.

Q. Did you ~~ar~~ not call the attention of any car repairers to the condition of this hand hold?

A. Yes sir, as I passed the car shanty I told them there was a car with a loose hand hold—I don't remember whether they heard me or not—they never moved—I didn't walk up to the shanty—I was about twenty or thirty feet away and I told them the grab iron was pulled loose.

Q. Where were these inspectors at the time?

A. Sitting in front of the shanty.

Q. What direction was that from the track?

A. Right on the side of the track.

Q. Which side?

A. North side of the lead.

Q. What was the general condition of the track—what direction did it run at that point?

A. The track lead there runs southeast and northwest and turns again east and west.

40 Q. What is this Nonconnah, something of a junction point?

A. It is where they make up and bust up trains.

Q. What, if anything did the car repairers do to this hand hold that you have mentioned?

A. No sir, not that I seen.

Q. I want to be sure that I understand you and that you rode this car with the loose hand hold into Memphis, am I right or not?

A. Yes sir.

Q. What engines were working down there at Nonconnah at the time you noticed the condition of this hand hold?

Mr. Helsell: Objected to as immaterial.

A. Well a couple of road engines there. We had little "Bum" and "Big Bum" and I was on "Big Bum" engine.

Q. What engine hauled the train that you were on?

A. Bum engine.

Q. What *entils* on the engine.

A. I. C.

Q. And the other two road engines, what road were they from?

A. They were over in Nonconnah yard—I don't know what they were—on the Valley side.

Q. Are there several roads that run into Nonconnah, or not?

A. The Y. & M. V. and the I. C. The Y. & M. V. comes in and delivers to the I. C. and the I. C. delivers to the Y & M. V.

Q. Do you remember who was the engineer on this Illinois Central engine that hauled the train in which had the broken hand hold on this car?

A. No sir, I did not work the engine that night.

Q. Did you know the fireman on this Illinois Central that hauled the car with the broken hand hold?

Mr. Helsell: Objected to as assuming a fact not in evidence.

41 A. I did not know anybody but the foreman—Dick Nethercross.

Q. He was foreman at Nonconnah?

A. He was fireman on that Bum engine that night.

Q. What do you mean by the term "Bum" Engine?

A. An engine that bums all round and does work over the terminals.

Q. In North and South Memphis?

A. All over town.

Q. And it was an Illinois Central engine?

A. Yes sir, it was an I. C. Engine that we used that night, I do not remember the number of it.

Q. Was there any engine or car of any kind between you and these car repairers that you speak of that night?

A. I was there on the side lead and they were sitting 30 feet away, I reckon.

Q. Was there any engine or car between you?

A. No sir.

Q. Think a minute—did not one of these car repairers answer you?

Mr. Helsell: Objected to as leading.

A. No sir, no body answered me—I just told you I didn't know whether they heard me or not—I was so far away. I could not state whether they were niggers or white men sitting there with lanterns.

Q. You have a paid foreman for those yards down there?

A. Yes sir.

Q. Do you know the main line from a side track or switch track, or passing track or house track?

A. Yes sir.

Q. This Illinois Central road that you have been over from New Orleans to Chicago, is it a single or double track?

Mr. Helsell: Objected to as assuming a fact not in evidence and immaterial.

42 A. Double track part of the way and single track part of the way.

Q. How far is it doubled tracked?

A. On the Cairo Division double track from Woodstock to Dyersburg, Tenn., from Dyersburg to Trimble, and raised from Fulton.

Q. How is it through Memphis?

A. It is double track through the terminals.

Q. Is it not double track *always* the way to Chicago?

A. No sir, not when I was up there.

Q. Is it not double track from Chicago to New Orleans, and has it not been for two years?

A. I have not been over it in five years.

Q. As you go south from Memphis is it not double track?

Mr. Helsell: Objected to as assuming that it is the Illinois Central road.

A. I have never been over it but once and then I was in the baggage car.

Q. Could you not tell by the passing trains?

A. I was running messenger and did not have time to look at the passing trains.

Q. If I understood you correctly running North and South there is only one main line that is used by the Illinois Central or the Yazoo and Mississippi Valley running North and South through Memphis?

A. Yes sir, from Poplar Street they join, is the best I know and run south from Poplar Street.

Q. Is or not there just one main line of railroad used clear through the City of Memphis by the Illinois Central and the Yazoo and Mississippi Valley?

A. One double main line track.

Q. Is that a single or double track railroad?

A. I just told you there was one double track main line.

43 Q. Is the Yazoo and Mississippi South or North of Memphis?

A. Supposed to start at Poplar Street.

Q. Answer my question, whether it runs North or South?

A. It runs from Memphis to New Orleans.

Q. And East or West of the main line of the Illinois Central Railroad?

A. After it leaves Memphis it runs West of the I. C.

Q. You have been speaking of the double track railroad of the Illinois Central that you know, and also of the Railroad of the Yazoo and Mississippi Valley running South from Memphis and West of the Illinois Central Railroad, at what Street do these two roads meet?

A. At what Street do they Meet?

Q. Yes?

A. They meet and run down from McLemore to Poplar.

Q. At what street do they meet near Trigg Ave.?

A. Half way between Trigg and McLemore—McLemore Junction is right exactly half way.

Q. And from a point between Trigg Ave. and Memphis and McLemore Ave. the main line of the Yazoo and Mississippi Valley run- South, does it not?

A. Yes sir.

Q. And the double track of the Illinois Central Railroad runs straight South, does it not?

A. It is double track to East Junction.

Q. McLemore Ave. is near Trigg Ave. is it not?

A. Yes sir, it is the first street North of Trigg.

Q. And between these two avenues this track that the Illinois uses from Chicago to New Orleans is right there is it not?

A. Yes sir, where the Valley connects.

Q. And it is doubled tracked right to the North of this Junction point between these two streets is it not?

A. Yes sir.

44 Q. And double tracked to the South?

A. Yes sir, doubled tracked to East Junction.

Q. Where is East Junction?

A. About three miles south of here.

Q. And going out of Memphis from this Junction that you mentioned is the Yazoo and Mississippi Valley single or double tracked?

A. Singled from here to West Junction.

Q. What is the next Street North of McLemore Ave.?

A. That crosses the Railroad?

Q. Yes?

A. Iowa Ave.

Q. And over which tracks or trains moved between McLemore and Iowa Avenues is it over the single or the double track to the South?

A. Some or pulled through the yards tracks.

Q. I mean those that go on the main line?

A. They don't run freight trains straight through Memphis over the main line.

Q. Is this not a double tracked railroad?

A. Yes sir.

Q. Does this single track railroad of the Y. & M. V.—the single track road, does it run North to McLemore Ave.?

A. It runs joint from the I. C.

Q. Where does the single track of the Yazoo and Mississippi Valley end—the single track?

A. Where does it join onto the main line?

Q. Yes?

A. At the South Yard at a point between Trigg and McLemore Junction.

Q. In Memphis?

A. Yes sir.

Q. And what does it join onto there?

A. Joins onto main line through the terminals.

Q. Do you mean this double track railroad from Chicago to New Orleans?

45 A. Yes, sir.

Q. That is North of Iowa Ave., what is the next Street?

A. Broadway.

Q. Is that the next one crossed by the railroad?

A. Yes, sir.

Q. What is next to that?

- A. Carolina and the next is Georgia.
- Q. And then what?
- A. The next is Calhoun and the next is Huling.
- Q. And the next North of that is Poplar?
- A. No sir, several cross between there and Poplar.
- Q. Between what streets is this Wade Elevator situated?
- A. Broadway and Iowa.
- Q. Then it is North of Iowa and South of Broadway, is it?
- A. Yes, sir.
- Q. And west of this double tracked railroad?
- A. Yes, sir.
- Q. How far South do the Wade Elevator tracks extend?
- A. In the Elevator.
- Q. In the South end of the Elevator, you mean?
- A. Yes, sir.
- Q. What do they connect onto there?
- A. The Bumping Post.
- Q. And in what direction do they run from there?
- A. North.
- Q. How many of them are there?
- A. I think there are two scale tracks, a loading track—I don't know the names of the tracks in the Elevator.
- Q. How far are these Wade tracks West of this double tracked railroad?
- A. One Hundred Yards.
- Q. And in what direction do these tracks then run from the Wade Elevator?
- A. They run parallel with it until it gets to the old depot.
- Q. The Wade tracks, what direction do they run?
- 46 A. Parallel with the elevator North and South—runs beside the elevator.
- Q. How far North do they run?
- A. North to the end of the elevator, I reckon the tracks are 150 yards long.
- Q. And at the North end do they connect with the same railroad tracks?
- A. Yes sir, connect with the lead and then with the main line.
- Q. The lead connects with the double track to the North?
- A. Yes, sir.
- Q. Where is it that this lead track that leads you to the Wade Elevator tracks, where does it connect with any main line railroad?
- A. Comes in there in three or four different ways.
- Q. I mean to the North?
- A. Going over the hill it would be Huling St. Junction if you go North from the Elevator that is the first place you connect with the main line.
- Q. And that is this double tracked railroad from Chicago to New Orleans?
- A. It is single track from Broadway to Huling Street Junction.
- Q. But it is the same straight North and South railroad?
- A. The same as you run passenger trains on.

Q. And the main line, does it connect with the lead which takes cars to the Wade Elevator—does it connect with this railroad over which the Illinois Central Railroad runs its passenger trains from Chicago to New Orleans?

A. Yes, sir.

Q. Now, then, is there a way to get into the Wade Elevator from the South?

A. Yes sir, back down the main line and head in there to Iowa Ave.

47 Q. Is there any lead from the south?

A. You have to cut in at Iowa after you leave the main line.

Q. You have told us there is one lead that goes to the North?

A. That comes from "Grab Hill."

Q. Is there any other lead connecting with the main line of the Illinois Central Railroad in Memphis by which you can reach the Wade elevator?

A. There is a switch north of Iowa Ave., you can get in there.

Q. Not on a lead, you mean, or do you mean a lead?

A. You come from "Cut Off" switch north to the end of Iowa and cross over and go in on what is called "West Lead" at Iowa and go into the elevator.

Q. Is there any way you could get a car of grain into this Wade elevator from any main line of railroad in Memphis, south of Iowa Avenue?

A. No sir, not south of Iowa Avenue.

Q. And what is the usual way of getting it in or out?

A. From the north end of the elevator and back in.

Q. Over this lead you have mentioned?

A. Yes sir, north of the elevator and back in.

Q. Now, then, going to this junction point between Trigg Ave. and McLemore Ave., when this car with the loose hand hold came into Memphis—the time you rode on it—did it come in over this single track that goes to the south or over the double track that runs from Chicago to New Orleans?

A. Over the double track by East Junction.

Q. Was it ever for so much as one foot carried over the single track of the Yazoo & Miss. Valley running to the South from this Junction that you mention?

A. No sir, not to my knowledge—unless some yard man backed it in down there.

48 Q. But, so far as the transportation was concerned it came in over the double track that runs from Chicago to New Orleans, didn't it?

A. It came in from Nonconnah—I don't know what road it came in on, we brought it from Nonconnah by East Junction to town.

Q. That is the Illinois Central over which they run passenger trains from Chicago to New Orleans?

A. They operate the through trains over the same tracks.

- Q. And it was **over** these tracks that you brought it into Memphis?
- A. The same tracks.
- Q. Is it a double track?
- A. Yes, sir.
- Q. And from East Junction to Nonconnah?
- A. No, at that point there is a lead going to Nonconnah.
- Q. Does not the main line of the Illinois Central pass through Nonconnah?
- A. No sir it is connected with a lead.
- Q. And how long is this lead from the Illinois Central to where you got this car at Nonconnah?
- A. About two miles, I reckon.
- Q. And this leads to a double tracked railroad?
- A. Yes.
- Q. When you pulled this car out at Nonconnah on the single tracked railroad, how far did you pull the car before you reached the double tracked railroad?
- A. About one mile.

Cross-examination by Mr. Helsell.

- Q. Counsel has been pleased to call attention to the fact that you spoke to me this morning—I am the party with whom you talked?
- A. Yes, sir.
- 49 Q. In that talk with you did I suggest to you a single word that you would stay up here?
- A. No sir, you did not.
- Q. Did I ask you in the slightest degree, or even hint at your changing a suggestion that you made to me?
- A. No sir, you did not.
- Q. Was anything more said than I asked you what you knew about this action?
- A. No sir, that was all that was said.
- Q. And you told me practically what you have told here?
- A. Yes sir.
- Q. And after you told me, did I hint or suggest, or say anything that would lead you to believe that I wanted you to change a single word?
- A. No sir, you did not.
- Q. Now, do I understand you correctly to say you have always understood, so far as you had anything to do with it, that the Yazoo & Miss. Valley Railroad owned and controlled all these tracks that you have been talking about up as far as Poplar Street?
- A. Yes sir.
- Q. And also owned the tracks that you have mentioned in South Memphis?
- A. Yes, sir.
- Q. As far as you know, or mean to be understood as saying this is the case is it not?
- A. Yes sir, it is my understanding.
- Q. At the time that you were handling this car, and during all the time that you worked that month, who paid you?
- A. My checks say "Y & M. V."

Q. And you understood that you were hired out to the Yazoo and Miss. Valley?

A. Yes sir—that is what I have always been told since I worked here, that the I. C. owned nothing North but the North Yards—I do not know.

50 Q. That is all north of Poplar Street?

A. Yes sir.

Q. And all south of Poplar Street out to Nonconnah and out to West Junction down to New Orleans, as far as you have ever been informed, belonged to the Yazoo & Miss. Valley Railroad?

A. Yes sir.

Q. And do you know *that* the men who were handling the engine, and all those men down there on that side are paid by?

A. I never have taken any notice of the checks—I have a brother firing on the Y. & M. V.

Q. But all that counsel has asked you about as to those different tracks south of Poplar Street, and that you testified about, it has been your understanding and your belief that the service thereon is paid by the Yazoo & Miss. Valley Railroad?

A. Yes sir, I was flagging on the north end and had I. C. checks, but ever since then the checks have been Y. & M. V. I have been told everything south of Poplar belonged to the Valley and everything north to the I. C.

Q. And you understood that all the time you have been working here?

Q. Do you personally know where that car came from when it was put in the place where you first picked it up?

A. I forgot what track it was, whether it was #9, #10 or #11, it was in the "hold" track, at Nonconnah.

Q. When you say it was in the "hold" track, what do you mean?

A. Hold it for disposition.

Q. In other words it was there and you were instructed to bring it here?

A. Yes sir.

Q. Where it came from, and which direction we know nothing about that.

51 A. No sir, I do not know what road it came over—it might have been a foreign road, for what I know.

Q. The Illinois Central and the Yazoo & Miss. Valley carry cars sometimes to roads scattered all over the United States, do they not?

A. Yes sir.

Q. And do you know how long this car has been in possession of any particular road, do you?

A. No sir.

Q. Or how long they had had any knowledge of it?

A. No sir.

Q. You spoke as you were coming up at some point about yelling to somebody about this hand bearing being loose, just where was that?

A. Down on a lead at Nonconnah—about thirty or forty feet across the lead from the shanty.

Q. And how far is that south of Memphis?

A. Nonconnah, I judge, is five or six miles.

Q. And how far is East Junction?

A. About four miles.

Q. So Nonconnah is further south than East Junction?

A. East Junction is south from here, and you run due west to go to Nonconnah.

Q. And you say by rail it is six miles and four miles to East Junction?

A. Yes sir, I judge so.

Q. You don't know what was in that car?

A. No sir, I never looked at the car to see its contents. I saw it was carded "E" and knew it was grain.

Q. It was what time of night when you called to those men?

A. I never noticed the time, it was between nine and ten-thirty.

Q. You just noticed them, but didn't notice who was who or what men were there?

52 A. No sir, they were across the lead and I could not tell whether they were white or niggers.

Q. You could not mention the names of the men?

A. No sir, they were sitting there with car inspector lamps in front.

Q. You yelled and don't know whether they heard you or not?

A. No sir.

Q. How long did you stop at that point?

A. After I kicked the car up the lead I set the brake and went up and got another and put it in the hold track.

Q. You don't know as a matter of fact, whether any one ever fixed the hand hold or not?

A. I don't know whether any one fixed the grab iron—it was loose when I got off at McLemore Ave.

Q. Can you tell how long after you yelled to those men—how long after it that you ran up here into Memphis?

A. I reckon forty-five minutes—maybe an hour—as soon as I got up town it was time for supper.

Q. Now, at any time during the time that you saw or knew of the whereabouts of that car, was it on a track to your knowledge, north of Poplar Street?

A. No sir, that is where the grain is inspected in North Yard.

Q. You don't know personally, what became of it, what became of it when it was moved again?

A. No sir, if it had not been inspected.

Q. If it had not been inspected. Did it have to be inspected?

A. If it had to be inspected before it went to the elevator.

Q. But so far as you know, you don't know where it went after you dropped it.

53 A. After I got off at McLemore Avenue was the last I saw of it.

Q. And that is all south of Poplar Street?

A. Yes sir.

And further deponent sayeth not.

JNO. MCGINNIS.

Witness fee of \$2.00 paid by Plaintiff.

Counsel for complainant announces that this is all the evidence that would be taken.

At this time the defendant- protest against the recital of the depositions at all as not sufficient notice was given it before the taking; the notice for taking is not in legal form and takes exception to the introduction of the evidence for each and all for the reasons given.

54 I, H. L. Graves, do hereby certify that E. A. Lee and Jno. M. McGinnis were by me first severally duly sworn to testify the truth, the whole truth and nothing but the truth, and that the depositions by them respectfully subscribe- as above set forth, were reduced to writing in short hand by L. M. Bryant in the presence of plaintiff and his counsel, M. F. Harrington, and in the presence of Mr. F. H. Hellsell, attorney for the defendant; and that the examination was so taken both in chief and cross examination in short hand without objection by the parties and all participated therein and that said testimony was then transcribed in typewriting by the said stenographer, L. M. Bryant, and that said stenographer is in no manner interested in this action, and the said testimony was taken in the presence of witnesses and that after being transcribed the typewriting was read over by said witnesses before they signed the same, and that the same was subscribed by said witnesses in my presence and was taken at the time and place in the annexed notice specified; that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit.

In testimony - of I have hereunto affixed my signature this the — of August 1913.

Notary Public.

55 We the undersigned local attorneys for the defendants waive formalities as to notice, cross missions, &c., as to taking foregoing depositions and agree that such parts of them as are admissible may be read in evidence of the trial in the Circuit Court of Hinds County, all questions of competency and relevancy reserved to be settled by the Court out of the presence of the jury and before the trial.

WELLS, MAY & SANDERS,
Att'ys for Defendant.

Filed Sept. 21, 1914. E. D. Fondren, Clerk. J. P. Cadwallader, D. C.

56 Mr. GEO. R. WILLIAMS the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Harrington:

Q. What is your name?

A. Geo. R. Williams.

Q. And what is your age?

3—637

- A. 26 years old.
- Q. Where is your home?
- A. Atkinson, Nebraska, or near Atkinson.
- Q. Youe people live on a farm there, do they?
- A. Yes sir.
- Q. In what state were you born?
- A. Nebraska.
- Q. You may state what was the general condition of your health before the 15th day of March, 1913?
- A. I was always well; I never had any serious disease of any kind.
- Q. What was your ability to move about.
- A. It was good.
- Q. Did you ever have any lameness before that time?
- A. No sir.
- Q. Any organic trouble of any kind?
- A. No sir.
- Q. Do you know about what your weight was, Mr. Williams?
- A. 150 to 155 pounds.
- Q. How was your sleep before that time?
- A. Al-right.
- Q. What was the condition of your nerves?
- 57 A. It was al-right.
- Q. And what was the condition of your back?
- A. It was al-right.
- Q. What was the condition of your kidneys?
- A. Alright.
- Q. Did you ever have any paralytic feeling of any kind before that?
- A. No sir.
- Q. Did you ever have any numbness or sleepy feeling in your legs before that time?
- A. No sir.
- Q. What kind of work had you done?
- A. I had been railroading since 1908.
- Q. What kind of work had you done railroading?
- A. Switching and braking.
- Q. Day work or night work?
- A. Day and night both.
- Q. Had you been engaged in any other line of work besides railroading?
- A. Yes sir, I was in the newspaper business when I was 15 years old.
- Q. Where at?
- A. At Hoskins, Nebraska.
- Q. What were you doing on the newspaper?
- A. It was my own—I was running it.
- Q. At 15.
- A. Yes sir.
- Q. After that did you do any other newspaper work?
- A. Yes sir.

58

Q. Where at?

A. I traded the paper at Hoskins for one at Magnet; my people lived there then.

Q. Did you run a newspaper at any other place?

A. Yes sir, I bought the paper where the folks live now, at Atkinson, in 1911.

Q. How long did you run that paper?

A. About four months.

Q. While you were railroading, before March 15th, 1913, were you ever injured?

A. No sir, not seriously.

Q. Well, were you hurt once?

A. Yes sir.

Q. About when was that?

A. That was in 1913.

Q. And about what time in 1913?

A. Either February or March—I don't remember positively now.

Q. Of 1913?

A. Yes sir.

Q. Have you the year right?

A. I don't believe I understand your question.

Q. I say were you hurt while railroading, before you were hurt at Memphis?

A. Yes sir.

Q. What year was that?

A. In 1912.

Q. And in what month of 1912?

A. Either February or March, and I am quite sure it was February.

59

Q. Where were you that time when you were hurt?

A. Cedar Rapids Iowa.

Q. What Railroad Company were you working for there?

A. Rock Island.

Q. What was the nature of the injury you had there?

A. The doctor thought I had a double rupture, and they did me up for rupture—took a piece of gauze and put on each side—but they to-k that off in 2 or 3 days, and I stayed there a short time at the hospital; I was awful sore in my stomach and in my groin; and then I went to my room and took cold and took influenza and had to go back.

Q. Were you ruptured, as a metter of fact?

A. No sir.

Q. Or any permanent injury of any kind?

A. No sir.

Q. How long did this influenza cold keep you in?

A. Three or four weeks.

Q. After you got over that what was the condition of your health and physical condition generally?

A. Just as before; it was good.

Q. Do you know these two defendant companies, the Illinois Central and Yazoo & Mississippi Valley Railroad companies?

A. Yes sir.

Q. Did you ever work for these roads, the defendant companies?

A. I worked for the I. C. at Centralia, Illinois.

Q. Did you work for the two of them together anywhere?

A. No sir.

Q. At any time?

60 A. Do you mean previous to my accident?

Q. Well when you worked at Memphis, for what companies were you working?

A. I. C. & Y. & M. V.

Q. What do you mean by the I. C.?

A. Illinois Central and Yazoo & Mississippi Valley.

Q. The defendants here?

A. Yes sir.

Q. Q. Where did you work for those two companies?

A. In Memphis.

Q. What State?

A. Tennessee.

Q. When did you go to work for them?

A. The 9th day of January.

Q. What year?

A. 1914.

Q. '14 or '13?

A. '13.

Q. Do you — with which one you signed the contract?

A. The I. C. Railroad Company.

Q. Did either of these companies give you what is called a service card?

A. Yes sir.

Q. Which company issued the service card?

A. The Yazoo & Mississippi Valley.

Q. Do you have that service card with you that you received from the defendant, the Yazoo & Mississippi Valley Railroad Company?

A. Yes sir.

61 Q. Hand it to the reporter, that it may be identified as exhibit "A."

(This service card is here offered in evidence and marked "Plaintiff's Exhibit "A.")

Q. When did you sign the contract of employment with the Illinois Central?

A. The same day, January 9th, 1914.

Q. What year?

A. 1913—I get them mixed.

Q. After you signed this contract of employment with the Illinois Central, and got the service card from the Yazoo and Miss. Valley, what did you go doing?

A. Went to switching for the companies jointly.

Q. Where did you work?

A. All over the terminal yards of the two companies at Memphis.

Q. Will you describe these terminals—where they are and what they consist of?

A. Well, the yard proper starts—the north end of it is used for industry tracks, factories, etc. and they have storage yards out there, and next is what they call the North Yards—they use that for a storage track for grain and stuff going south; then the next yard—

Q. How many of these tracks are there in the North Yards at Memphis?

A. Probably thirty.

Q. How many of these tracks are there in the South yards at Memphis?

A. Twenty one.

62 Q. How are the North terminal and the south terminal connected?

A. By a double track—main line of the I. C. and Y. & M. V.—used jointly.

Q. How — main lines are there at Memphis, connecting these North and South terminals?

A. Two.

Q. Was that the condition while you worked there?

A. Yes sir.

Q. What railroad Companies used these tracks between the two terminals, and the terminals?

A. The Y. & M. V. and the I. C.

Q. What do you mean by the Y. & M. V.?

A. Yazoo and Mississippi Valley, and Illinois Central Railroad Companies.

Q. While you worked as a switchman there, what engines switched cars about from one terminal to the other, and in the different terminals?

A. Illinois Central engines.

Q. What cars were switched about in those yards?

A. All the cars from all the different railroads in the United States.

Q. Were you at that time familiar with a large part of the line of the Illinois Central Railroad—that is, to know where it ran and operated trains?

A. Yes sir.

Q. Through what States was the Illinois Central Railroad Company operating a railroad at that time?

A. From Omaha to Chicago, and from Chicago to New Orleans.

63 Q. Did that road pass through Memphis or not?

A. It did.

Q. Over what part of the road had you personally traveled before that time?

A. Between Omaha and Chicago, -nd from Chicago as far as Grenada, Miss.

Q. Is Grenada on the main line from Chicago to New Orleans, or not?

A. Yes sir, it is.

Q. Do you know from your switch work, what some of the different states from which these cars which you as a switchman handled, came?

A. Yes sir.

Q. Nmae some of the States from which they came to and through Memphis over the Illinois Central?

A. Louisiana, Mississippi, Arkansas, Kentucky—Well, I have seen cars there from all over—Nebraska and Illinois—

Q. How grain shipments; from what States did these cars come?

A. Well, I wouldn't be so positive about that; I don't know as I ever paid particular attention to that. There was grain shipments come from all of the states.

Q. Name some of them?

A. Illinois—I have seen lots of cars of grain in Memphis yards from Illinois and Iowa.

Q. As a switchman, while you work in the yards, up to the time you were hurt, did you help switch cars coming from these different states?

A. Yes sir.

64 Q. What kind of traffic was handled in the terminal yards at Memphis—whether they are shipped exclusively in Tennessee or not; what is the fact?

A. Well, they handled cars from all over the United States.

Q. Now then, did you help switch cars that came over the Yazoo and Mississippi Valley road too, while you worked there in Memphis?

A. Yes sir.

Q. Do you know from what different states these cars came, that were switched in the Memphis yards—or some of the States?

A. Yes sir.

Q. Name some of them?

A. Louisiana and Mississippi.

Q. Do you remember March 15th, 1913?

A. Yes sir.

Q. Did you go to work for these companies that evening?

A. Yes sir.

Q. At what hour, about?

A. About 7 o'clock.

Q. What were you doing that particular evening?

A. I had been assigned as a regular helper on this yard job at Iowa Avenue.

Q. That's there in Memphis?

A. Yes sir.

Q. Is that part of these terminals?

A. Yes sir; they had assigned me as a regular helper. You see, when you are employed as a switchman you must go against the extra board. They have a lot of extra men, and as soon as there is enough engines working so you can hold a regular job you are appointed on that regular job, and you work as long as it is mutually satisfactory, and on March 15th they assigned me to this Iowa Avenue as a regular helper there, and I went to work there at 7 o'clock that night.

Q. That means steady work?

A. Yes sir.

Q. What wages were the defendants paying you?

A. \$3.70 for 10 hours' work, but invariably we worked the super hour—I mean we worked after 12 o'clock and would get credit for an hour, and would have thirty minutes for lunch, and ordinarily we worked the morning hour, that would be about 7 o'clock—they would get pay for 12 hours at 37 cents an hour.

Q. You went to work at 7 o'clock that evening?

A. Yes sir.

Q. Was it dark then or not?

A. It was just dark.

Q. Where did you go to work?

A. I walked down between track- No. 20 and 21.

Q. Where at?

A. At the Iowa Avenue yards.

Q. Would that be in the south terminal of the defendants at Memphis, or the North terminal?

A. That would be the *south* terminal. The McLemore Avenue yards—they call it Iowa or McLemore. Our engine went to work at Iowa Avenue.

Q. Have you made a plat showing the condition of this terminal of the main line and different tracks as they existed in Memphis, Tennessee, in what is known as the south yards, at the time we are talking about now, March 15, 1913?

A. Yes sir, I have.

Q. Is that the plat, which I now hand you?

A. Yes sir, it is.

Q. Is that a correct representation of the tracks as they existed at that time?

A. Yes, sir, so near as I can remember them.

Q. Which is the west track of all these—what is the number of it?

A. Track No. 21.

(This plat is here introduced in evidence, and marked "Plaintiff's Exhibit B.")

Q. You walked down between tracks 20 and 21?

A. Yes sir.

Q. What to do?

A. The foreman told me we would shove the tracks so as to make more room at Iowa Avenue end, so we could kick our cars in—that is, shove them or kick them in—we start them and let them run, which is quicker.

Q. What do you mean by shoving the tracks?

A. To make room for more cars; and there was an engine that worked at the McLemore end of the yard—

Q. What do you mean by shoving the tracks—pushing the cars together?

A. Yes sir, shove them to the opposite end to make more room at our end of the yard, and I was instructed to go to the far end of the yard to keep from shoving out of that end—the south end.

Q. Which track were you working on at that time?

A. Well, we start on track 21 and go clear across the yard.

Q. Is that where you started?

A. Yes sir, we did.

Q. How long had you been at work before you were injured?

A. I just walked to the south end of track 21, and there was 3 gondolas on the south end—

Q. We will come to that in a minute—how long had you been at work, I say?

A. It would take me five or six minutes to walk down there.

Q. In addition to shoving the tracks, and after that was done, what was it proper to do next?

A. Well, you would have to set the brakes on the south end of the cars to keep from shoving them into the cars on the other tracks at the south end of the yard, or to block the lead.

Q. Can you explain to the jury what you had to do, and why it was necessary to set the brakes on this track 21?

(Showing witness plat.)

A. Yes sir—this is not a very good drawing, but it will illustrate—

Q. Where did you start to work—what indicates it on this Exhibit "B"?

A. I have the little shanty marked "Yard Office."

Q. Is that where you started to work?

A. That is where I was to report to work.

Q. Is that where you did report that evening?

A. Yes sir.

68 Q. The- where di- you go—what direction?

A. South.

Q. Then where did you go?

A. Walked down, going south, between tracks 20 and 21, going to the south end of track 21.

Q. If you failed to set the brakes at the south end of track 21, *would* would happen when the- shoved the track?

A. The engine would come on 21, and this is around a curve, and without any brakes being set on them, they would shove them into track 20, which was full of cars—and turn them over and cause a lot of damage.

Q. They would crash into the cars on track 20?

A. Yes, sir.

Q. What are all these tracks used for—what kind of commerce?

A. Well, used for making up and breaking up trains, and storing cars that were brought into Memphis and then set out.

Q. From what States?

A. All the states—the regular trains that come in. Tracks 1, 2, 3, and 4 we made up trains that went down the Valley.

Q. The Yazoo and Mississippi Valley?

A. Yes sir, and the Illinois Central.

Q. What direction would the engine shove the track from?

A. They would shove from the North to the South.

Q. Do you know what cars stood at the south end of track 21 when you walked down that evening, March 15?

A. Yes sir.

Q. What car stood at the extreme end of that track?

A. 3 gondolas.

69 Q. What stood right next to these 3 gondolas?

By the Court:

Q. What do you call a gondolas?

A. It is a car about half the height of a box car, with the top open, for the reason that it would be more convenient to load gravel, dirt and rails, and things of that description, that the weather won't hurt—

By Mr. Harrington:

Q. Something like a coal car?

A. Yes sir.

Q. Do you know what carding, if any, was on this car north of the three gondolas?

A. Yes, sir.

Q. What carding was on it?

A. It was carded "E."

Q. Do you know whose carding that was?

A. Yes, sir.

Q. Whose?

A. John Wade & Sons.

Q. Who was John Wade and Sons?

A. Grain and Hay dealers at Memphis.

Q. Did they have an elevator or not there?

A. Yes sir, they had an elevator and warehouse and storehouse.

Q. From what one of the defendant's tracks were the elevator or storehouses of the Wade people reached?

A. The Wade elevator and storehouse was west of track 21.

Q. Then from what track would the cars have to be sent into the Wade elevator?

A. You would head up the line north of the yards and back down to Wade's plant.

70 Q. From the main line or from what?

A. No sir, from the siding.

Q. What siding?

A. I couldn't say—one of the tracks of the yard that ran up there this way and then back into Wade's.

Q. What was the matter of the track that was nearest to the Wade elevators?

A. Track 21.

Q. That would be the west track?

A. Yes sir.

Q. Did you attempt to do anything on that box car that had this Wade carding on it?

A. Yes sir.

Q. What was that carding?

A. It was carded "E."

Q. What did you attempt to do?

A. I started up on it to set the brake.

Q. For what purpose?

A. To keep it from running out south on track 20.

Q. State what you did and what happened?

A. I started up the side ladder.

Q. By the way, did you have a lantern with you?

A. Yes sir.

Q. Was it lighted?

A. Yes sir.

Q. Could you see the carding by it?

A. Yes sir.

Q. Which side of the car were you on as you went up the ladder?

A. On the east side of the car, at the North end.

71 Q. What is the custom as to the number of ladders on one side of a box car?

A. One.

Q. If you are going up the ladder on the West side which end would the ladder be?

A. On the West side it would be on the south end.

Q. So this ladder was on the North end of the car?

A. Yes sir.

Q. On the North end of the car or side of the car?

A. On the side of the car.

Q. How close to the North End?

A. Right at the North end, but on the side of the car.

Q. State all you did as you attempted to go up to set the brake on that box car?

A. Well, when you are carrying a lantern you have to take your lamp on top of the car with you to see and give signals with, and it was customary to hold your — like that (showing).

Q. On your thumb?

A. Yes, sir, to sustain your hold, with your left hand, so you hold your lamp that way.

Q. Did you do that?

A. Yes sir, and you sustain your weight with those fingers that way (showing) and I went — top of the car and had my lamp that way, and sustaining my weight with the left hand on the last grab iron on the side of the car, and I took hold of the roof grab iron on top of the car this way (showing) with my right hand.

Q. What happened then?

72 A. The north end of the grab iron gave way with me — pulled right out.

Q. What resistance, if any, did the north end of the grab iron give?

A. Wasn't any resistance at all.

Q. Was there any actual pulling out even?

A. No sir.

Q. When this grab iron gave way when you took it with your right hand, what happened to you?

A. Well, I knew that I was falling. I remember taking hold of the grab iron; I took right hold of the north end of this grab iron and it came out with me, and I felt myself going up. Both your feet and hands are pretty close together, so you must pull your weight over the top of this car with one arm, and I was kinder humped up or bowed up when this came away, and I fell right straight back, and that is the last thing I remember at all; just after I started to fall I lost consciousness.

Q. How high were your feet on the side of the car at the time you fell?

A. Well, they would be within about three feet of the roof of the car.

Q. Do you know what happened to your lante-n or not?

A. No sir, I don't.

Q. What was the next thing you remember after you fell from the car?

A. I came to on the table at the hospital.

Q. Do you know how you got there?

A. No sir, I do not.

73 Q. Do you know whether you ever got on your feet yourself?

A. No sir I don't.

Q. Do you know who took you to the hospital?

A. No sir.

Q. Where were you when you became conscious?

A. In the hospital on the table.

Q. What hospital was that?

A. St. Joseph's.

Q. Who was there if you remember?

A. Dr. Malone and C. T. Earle, a boy yhat I roomed with, was there when I came to.

Q. What was his employment?

A. Switchman.

Q. For the defendant here?

A. Yes sir.

Q. What did you find to be your condition when you came to?

A. I couldn't use myself at all, and I was in terrible pain and couldn't use myself; I couldn't raise my feet or raise my head off the pillow at all.

Q. Did you feel hurt anywhere?

A. Yes sir.

Q. Where did you feel your injury?

A. Through my back and hips.

Q. What use did you have of your legs at the time?

A. Didn't have any use.

Q. How long did you remain in that hospital?

A. About three weeks.

Q. How long did you sleep during that time?

- A. I didn't sleep for the first five nights and days.
- 74 Q. After that how was it?
- A. I didn't sleep well at all after that.
- Q. What doctor, if any, *tendered* you during the time you were in the hospital?
- A. Dr. Malone was in the room every day.
- Q. Did he give you any treatment?
- A. He gave me some medicine the first day I was there.
- Q. What if anything did he give you after that?
- A. That is all he ever gave me.
- Q. At the end of three weeks what was your condition?
- A. At the end of three weeks I was still just the same as when I came to. I couldn't stand on my feet and couldn't wait on myself in bed, the nurse had to clean me, and I wasn't any good to myself at all—I couldn't sit up, stand up or walk, and couldn't eat anything—it would make me sick.
- Q. Were you able to go to the toilet?
- A. No sir.
- Q. What was your ability to attend to the ordinary calls of nature on a bed pan?
- A. They tried to raise me up and put a bed pan under me, but it hurt so bad I couldn't stand to be raised to get one under me.
- Q. Where were you suffering most?
- A. Right in my hips.
- Q. What controls had you of your bowels?
- A. Very poor—sometimes I wouldn't know at all when it was going to happen.
- Q. At the end of three weeks what did you do?
- 75 A. I realized the fact that Dr. Malone wasn't doing anything for me, so I left the hospital and went to my room and called Dr. Duval.
- Q. By the way who is this Dr. Malone?
- A. He is the head of the surgical department of the I. C. and Y. & M. V. Railroads on the Southern Division, as I understand it.
- Q. Now what did Dr. Duval do for you?
- A. Dr. Duval took an old corset—a woman's corset and he made a kind of corset or brace—I don't know just what you would call it—It has staves in the back and then gauze over the front of it, and he laced that up on me real tight, and then I could set up a little while at a time, I got so I could stand to set up an hour or so.
- Q. Where were you at the end of these three weeks when Dr. Duval took charge of you?
- A. At my room.
- Q. In Memphis?
- A. Yes sir.
- Q. How long did you remain in Memphis under the charge of Dr. Duval?
- A. About three weeks?
- Q. How did you sleep during that time?
- A. I couldn't sleep very well.

Q. Were you able to get up?

A. Well, the boys would carry me to the toilet and carry me to the table.

Q. Who were the boys?—some of them that did that for you?

A. Different boys—I was staying at a boarding house, and different ones of the boys—Mr. Earle and several others boys

76 would come in and wait on me—carry me to the table and carry my meals to me.

Q. What was the employment of most of those boys?

A. They were all railroad men.

Q. What were your feelings doing all this period, three weeks in the hospital and three weeks in charge of Dr. Duval?

A. I suffered a great deal.

Q. Where and in what way?

A. Well, through my hips and legs and bottom of my feet and my back, and I couldn't sleep and couldn't eat, when I would eat anything it would make me sick. Dr. Malone gave me some medicine to try to settle my stomach but it didn't work. They did give me lots of cocaine and codeine to keep the pain down.

Q. Who gave you cocaine and codeine to keep the pain down?

A. The nurse at the hospital.

Q. At the end of three weeks under the charge of Dr. Duval, then where did you go?

A. Went to my home.

Q. Where at?

A. Atkinson, Neb.

Q. Do y-u remember about when you got home?

A. I believe it was the third of May, 1913.

Q. Did you have any medical treatment after that?

A. Yes sir.

Q. By the way, how did you get home—were you able to walk?

A. No sir.

Q. How did you manage to get about? to the trains and from them?

A. I had a cab to take me to the train at Memphis, and
77 had *any* automobile take me home when I got home—that is, take to the farm from Atkinson; my people lived on a farm and I had *any* automobile take me there.

Q. Did you have anything to assist you of any kind?

A. Had a cane. I tried to use crutches but I couldn't do it because the weight of my lower limbs would hold me up so much I couldn't stand it at all—I couldn't bear it.

Q. Where did you try to use crutches?

A. At my room in Memphis. That is where I got them. I had Dr. Malone send them to me, but I couldn't use them because I would be in worse pain than I was; so I could take this cane and move along a little bit that way very slowly, and in that way I managed to get home.

Q. How have you managed to move about ever since that time?

A. Well, I haven't been able to get around so very much.

Q. What have you been able to do?

A. Hav-en't been able to do anything.

Q. Do you walk some?

A. I can walk some, yes sir, but when I do my hips get to pain-
ing me so bad I just have to quit, that's all. I can just walk about
so much—there is a limit, I can't move around very much.

Q. Have you had to use anything to assist you to walk?

A. Had to use this cane all the time.

Q. Have you used it all the time?

A. Yes sir.

Q. What work have you been able to do from March 15th to
the present time?

78 A. Hav-n't been able to do anything.

Q. What are you able to do now?

A. I am able to do nothing.

Q. Now after you got home in May, what Dr. if any, did you seek
the advice of?

A. I went to Dr. Harris at Omaha.

Q. Do you know about when it was that you first consulted Dr.
Harris.

A. In July, 1913.

Q. Have you been under the advice of any Dr. ever since that
time?

A. Yes, sir, Dr. Harris.

Q. Have you been treated by Dr. Harris?

A. Yes, sir.

Q. Where at?

A. Omaha.

Q. About how many times have you been right under his per-
sonal treatment at Omaha since 1913?

A. I have been down there I would say a good half of the time—
just about half of the time I expect.

Q. Do you know about what your medical bill is with Dr. Harris
for the treatment he has given you or not?

A. No, sir, I don't know.

Q. About how much a week did it cos- you for your board while
at Omaha getting this treatment?

A. Well, it cost quite a bit, because I am not able to walk up
stairs—I had to have a room on the ground floor, and for that reason
it costs a good deal more.

Q. About how much a week?

A. Six dollars.

79 Q. Room and board?

A. Just the room.

Q. And your board how much?

A. Board ordinarily cost me four dollars or five dollars a week,
because I can't eat everything I get around lots of places and I have
to have different things made.

Q. What has been your appetite ever since your injury, on March
15, 1913?

A. Very poor.

Q. What can you eat?

A. Can't eat much of anything and keep it on my stomach, pretty much of anything makes me sick.

Q. Can you name some things you can't eat?

A. I can't eat meat to any extent. If I eat a little piece of meat it makes me sick right away, and I can't eat even green vegetables at all, and ordinarily any fruit or vegetables I eat makes me sick, as soon as I eat them I throw them right up—they won't stay on my stomach at all.

Q. What has been the condition of your nervous system since this?

A. Well, I have been in pretty bad shape all the time. I can't stand anything—I have fainting spells.

Q. What has the effect of a falling weight or anything upon you?

A. Well, I have fainted a number of times, happen like that—things happen unexpectedly.

Q. Were you down here to try this case last fall?

A. Yes, sir.

80 Q. Over in the office of Watkins and Watkins?

A. Yes, sir.

Q. While you were in there did anything happen?

A. Yes, sir.

Q. What was it?

A. I afterwards knew it was a book fell off of a book case.

Q. What happened to you by the way?

A. I fainted.

Q. Who was there when you fainted?

A. Both of the Mr. Watkins, and yourself.

Q. How frequently did you have these fainting spells, George?

A. Whenever I overwork—whenever I go too far with myself—when I exert myself too much—then anything like that happens, it sets me all a flutter.

Q. What do you mean by over work?

A. I can't work—when I walk around too much. I have tried to carry a bucket of water for my mother, and whenever I do that it makes me sick. I can't stand it. It makes me sick right now.

Q. Have you tried to do anything else at home besides carry a bucket of water?

A. Yes, sir.

Q. What else?

A. I tried to harness the team of horses one day, and I got one harness on and had all I could do to get to the house. I got so weak I fell to the ground in the barn—I sunk to the ground—I managed to get into the house and get to bed.

Q. Have you tried to do anything else?

A. No, sir.

81 Q. Did you ever try to go hunting?

A. Yes, sir, I did try that.

Q. How often?

A. 2 or 3 times. I went out once and took a shot gun and I shot it a couple of times.

Q. How did you get out?

A. Some boys came from Atkinson and took me with them.

Q. Did you go on foot or in a conveyance?

A. In a buggy. I shot once and it hurt me pretty bad, so then I took the lap robe and put it in front of my shoulder and tried to shoot that way and couldn't stand that so helped me in the buggy and I wen't home and wen't to bed and stayed till next day. I couldn't even get out of bed.

Q. Who were those two boys?

A. Clayton Perry and Harold Miller.

Q. Did you know they were coming after you?

A. No, sir.

Q. Do you know whether they were here at the last term of court?

A. Yes, sir.

Q. Did you bring them here?

A. No, sir, I didn't.

Q. Where are their homes?

A. Atkinson, Nebraska.

Q. Did you know they were coming to invite you hunting before they arrived at your place that day?

A. No, sir, I did not.

Q. Do you know whether they are back here this time or not?

82 A. No, sir, I haven't seen them.

Q. What was the height of the box car from which you fell?

A. About 16 or 18 feet.

Q. Do you know what cars, if any, were to the East of it on the next track?

A. There was some cars of logs directly opposite it.

Q. To the east?

A. Yes, sir.

Q. How close would they be?

A. 3½ or 4 feet.

Q. To the east.

A. Yes, sir.

Q. How were they in height, compared to where you fell from?

A. They were not as high.

Q. Do you know where your lante-n landed with reference to those logs?

A. No, sir.

Q. Or whether it went clear across them?

A. No, sir, I never saw the lante-n.

Q. Were you high enough for it to go clear across them?

A. Yes, sir.

Objected to as leading——

Q. What has been the feeling in your back ever since you were injured, March 15, 1913?

A. I have pain all the time; it hurts all the time; I am never free from it.

Q. How about your bowels?

A. Well, my bowels are about normal.

Q. And how are your legs?

83 A. My legs are no good to me—well, they are good to me, I won't say that but they are in very poor condition they are numb—I have no feeling in them at all.

Q. No feeling at all?

A. No, sir.

Q. Have there been any tests made of your legs?

A. Yes, sir.

Q. By whom?

A. Dr. Malone examined me when I got hurt, and Dr. Duval.

Q. What did they find as to any feeling in your legs?

Objection to what Dr. Duval and Dr. Malone found.

Objection overruled.

Q. What did they do?

A. They would take a pin or needle and stick me that way, and scratch the bottoms of my feet.

Q. You may state whether you felt it or didn't feel it?

A. I didn't feel it.

Q. Did any one else make tests on you, as to whether there was any feeling in your legs or not?

A. Yes, sir, the railroad sent for me to come to Omaha to have Dr. Hall from Chicago, Dr. Lord and Dr. Summers of Omaha, to examine me, and they took an ex-ray picture and looked at this brace, and made these tests on my legs.

Q. What tests did the Chicago doctor and the Omaha doctors of the railroad company make on you?

A. They took instruments and punched me all the way from my hips down.

Q. What effect, if any, did it have on you?

A. I never felt it at all.

84 Q. What instruments did they use to see if you had any feeling in your legs?

A. Dr. Hall from Chicago started with a pin point and Dr. Summers gave him a needle and they used that.

Q. What feeling, if any, did you have from these things they used on you?

A. I didn't feel it.

Q. What treatment has Dr. Harris been giving you during all these months?

A. Dr. Harris had a brace made for me to wear, to support my back and hold my hips together where they are broken, and then there is two steel rods that go up the back and leave a separation for the spine, so as not to injure my spinal cord, and the strap under there (showing) to hold me up.

Q. Have you been wearing this right along?

A. Yes, sir.

Q. Have you them on now?

A. Yes, sir.

Q. Well, let the jury see them. Take your cane and stand up

and let the jury see these instruments Dr. Harris has been having you wear all these months?

(Witness here shows the jury the brace he wears.)

Q. Do you have to wear that steel plate that tight all the time?

A. Yes, sir.

Q. And have been ever since Dr. Harris has been treating you?

A. Yes, sir.

85 Q. Mr. Williams, do you have any feeling in your legs now?

A. No sir.

Q. Any feeling by being stuck with a pin?

A. No sir.

Q. Are you willing that any member of this jury, or all of them, may stick pins and experiment with you?

A. Yes sir.

Q. Have you been able to earn money in any way, or have you earned money in any way, since March 15th, 1913?

A. I have not.

Q. What if any work are you able to do for the future?

A. I can't think of anything I could do sir.

Cross-examination by Mr. Wells:

Q. Mr. Williams, when did you begin work for the I. C. Railroad Company and the Y. & M. V. Railroad Company?

A. January 9th, 1913.

Q. Did you ever work for either one of the railroad companies before that time?

A. I worked for the I. C. at Centralia, Illinois.

Q. At what time?

A. In December, or about December of 1912.

Q. December 1912—then how long did you work for them at Centralia?

A. Just a short time.

Q. How long?

A. About a month I guess.

Q. Then where did you go?

A. I went to work for the Y. & M. V. and I. C. at Memphis next.

86 Q. What did you do in the meantime before you went to work for the I. C. and Y. & M. V.—did you work for the I. C. at Centralia up to the time you began work for the Y. & M. V. and I. C. at Memphis?

A. I think I left the employ of the I. C. at Centralia on the 28th day of December, and went to work for the I. C. and Y. & M. V. at Memphis on January 9th.

Q. January 9th?

A. Yes sir.

Q. And your injury occurred March 15th after that time?

A. Yes sir.

Q. Now you had previously worked for other railroads, hadn't you?

A. Yes sir.

Q. What other railroads had you worked for?

A. Chicago and St. Paul, Minneapolis and Omaha at Omaha, and the Chicago and Northwestern, and the Chicago, Burlington and Quincy, and the Santa Fe.

Q. What had were you working for when you were injured at Cedar Rapids?

A. Rock Island.

Q. And you had an injury then in which you claimed you were injured very much like you are now?

A. No sir, I did not.

Q. Didn't you at that time have a fall of a similar character?

A. No sir.

Q. How were you injured then?

A. I was setting a brake on a gondola, a low car.

87 Q. Well, a fall?

A. Yes sir.

Q. Then you went to the hospital?

A. Yes sir.

Q. And complained of the same injury practically you are complaining of now, didn't you, until you got a settlement out of the Rock Island?

A. The Rock Island Railroad settled with me, but I didn't complain of the same injury I am now.

Q. Didn't you complain at that time, and weren't you settled with on account of an injury to your back at that time?

A. No sir.

Q. Didn't you leave the hospital at that time claiming that your back was injured, just as you claim it is injured now?

A. No sir, I did not.

Q. You were injured—you said to your counsel on your leading examination that you never had had any serious trouble of any kind, and yet you tell us now you were injured by a fall; that you did go to the hospital for the Rock Island Railroad and prosecute your claim against them, and you got a settlement?

A. I didn't prosecute no claim at all; Mr. Gibson, the claim agent of the Rock Island, came and asked me how much he owed me, and I told him I didn't know whether they owed me anything, I have been sick, and he said Williams I will give you \$200.00, and give a note to the claim master that you have made a satisfactory settlement every way, and you can go to work whenever you feel well enough."

88 Q. You had this injury though, and were working then for the Rock Island, and had an injury to your back?

A. I had no injury to my back, no sir.

Q. Didn't you claim to have an injury to your back?

A. No sir, I did not; they bound me up for a double rupture.

Q. They bound you up for a double rupture?

A. Yes sir.

Q. Well, was that at the hospital?

A. No sir, Dr. Carl at Newton, Iowa.

Q. You went to the hospital?

A. Yes sir.

Q. You stayed at the hospital a month or more?

A. No sir.

Q. Three weeks?

A. I don't remember just how long it was; I was there a short time, I think about a week, and then I went to my room and exposed myself and got this influenza, and Dr. Ristine sent me back to the hospital.

Q. I say you went back to the hospital—went off and went back. Dr. Ristine was District Surgeon for the Rock Island Railroad?

A. Yes sir.

Q. And he treated you for your injury on March 22d, 1912, or about that time?

A. Yes sir.

Q. Wasn't your diagnosis at that time, that you had received a severe contusion to the back and hips over the left lumbar muscles?

A. No sir.

89 Q. Didn't he estimate your disability at that time for six weeks?

A. No sir.

Q. The District Surgeon for the Rock Island?

A. He did not that I know anything about, and I don't think he did. When he come in and examined me he laughed at Dr. Carl for doing me up for a double rupture; he says "You will be all right in a day or two, you have had a strain there, but that won't kill you, and if you take care of yourself you can be back at work in a few days."

Q. Dr. Carl was the local surgeon for the Rock Island?

A. Yes sir, at Newton.

Q. Didn't you complain then of your back and shoulder being injured?

A. No sir, I did not.

Q. Didn't he then call in Dr. Ristine, the District Surgeon of that Railroad?

A. They sent me to the hospital at Cedar Rapids, Newton, where I got hurt, was just a little bit of a town—this doctor sent me to the hospital.

Q. That was when—March 22d, 1912, wasn't it?

A. Yes sir.

Q. And your injuries, whatever they were at that time, were caused by a fall from setting the brake on a car, wasn't it?

A. Yes sir.

Q. And you say you were injured to such extent at any rate they thought you were ruptured, and bound you up on that account?

A. This Dr. Carl did, and when I got to Cedar Rapids Dr.
90 Ristine laughed at him for doing me up, and took them off and said there was nothing the matter with me, I just had a jolt and would be all right.

Q. How long did you stay in the hospital at Cedar Rapids altogether?

A. I was there until sometime in April.

Q. You stayed in the hospital at Cedar Rapids just about as long as you stayed in the hospital at Memphis, didn't you—about the same length of time?

A. I don't remember exactly, but I guess you are right about that practically. I was at the hospital there the second time, as I told you, for what Dr. Ristine called influenza, and the reason I got this influenza was because they put me on a stretcher or cot with one thickness of canvass, and changed trains with me three times in the month of February, and I caught a severe cold that went into influenza, and all the time I was in the hospital at Cedar Rapids, from the first night I went there, they put hot things on my chest and gave me medicine to loosen that cold up—this cold I caught when Dr. Carl sent me from where I got hurt to Cedar Rapids; that is what I was in the hospital there for.

Q. That was in February 1912?

A. Yes sir.

Q. And you stayed there up to April 1912, I believe you said?

A. I don't remember exactly.

Q. You were discharged from there about April 1912?

A. Yes sir.

Q. Where did you go from there?

91 A. I went to Chisholm, Minnesota, to work for the Northern Pacific.

Q. How long did you work for the Northern Pacific?

A. I worked just a short time.

Q. What did you do?

A. That was in the mining country, there are iron ore mines there, and I got up there, work was pretty scarce and I got there just at the last of the season and I couldn't work regularly; they sent me to Chisholm—so I left there and went to Winnipeg, Canada.

Q. How long did you work there before you left Chisholm?

A. Probably four days.

Q. Four days only?

A. Yes sir.

Q. Then about that time did you leave there to go to Winnipeg, Canada?

A. I went to Winnipeg I think in May 1912.

Q. What did you do in Winnipeg?

A. I was in Winnipeg switching for the Canadian Pacific till October or November.

Q. October or November 1912?

A. Yes sir.

Q. Then where did you go?

A. I came to Staples, Minnesota, and went to work for the Northern Pacific.

Q. And how long did you stay there?

A. About two or three weeks.

92 Q. Then where did you go?

A. I went to St. Louis.

Q. Who did you work for there, and how long?

A. The Bridge and Terminal Company.

Q. How long?

A. Just a few nights.

Q. Then where did you go?

A. I went to Decatur, Illinois.

Q. Who did you go to work for there?

A. The Wabash.

Q. How long did you work for the Wabash?

A. Nine or ten days.

Q. Then where did you go?

A. Went to Chicago.

Q. Who did you work for at Chicago?

A. I hired to the I. C., but I was around there and couldn't even get in one night, so I had them send me to Centralia.

Q. At what time did you get to Centralia?

A. Early part of December.

Q. Now from January 9th, I believe you were signed up with these people at Memphis?

A. Yes sir.

Q. What had you been doing from January 9th up to the time you received this injury at Memphis?

A. I had been switching.

Q. In that same yard?

A. Well, now, are you classing each yard separately, or all the property owned by the I. C. and Y. & M. V.

Q. I am just talking about the yards at Memphis?

93 A. Yes sir, I worked in all those yards.

Q. What yard did you work in in January?

A. Worked in all of them—different yards.

Q. Were you working in all of them all the time?

A. Well, practically, yes sir. You see, if you are assigned to a tramp engine you work all over the yards?

Q. You go wherever the engine goes?

A. Yes sir, wherever they send you.

Q. When were you assigned—you said something about you were on an extra gang, or something like that, and then were assigned to certain steady work?

A. Yes sir; you see, one day a railroad company will have lots of business, and next day it won't have so much, and for that reason there is always a surplus of men, and when you hire as a switchman at Memphis there is probably 20 extra men, and I was one of the extra men.

Q. How long were you an extra man?

A. Up to the day I got hurt.

Q. From January 9th, all the time up to the very day you got hurt?

A. All this time up to the day I got hurt—March 15th I was assigned to this job of helping I got hurt on.

Q. At what time that day were you assigned to this regular job, that made you a steady man?

A. In the afternoon.

Q. Did you go to work in the afternoon?

A. No sir, at seven o'clock Saturday night.

Q. Then you were an extra man up to the time you were assigned, and within a few minutes after you were assigned to a steady job you got hurt?

94 A. Let me explain this thing—we have a board, and that thing moves with each man that leaves the employment—there was a man older than me, I don't recall his name now—but him and I were both up for a regular job, and he didn't decide which one he wanted to take, either the house job or this Iowa Avenue job was open, and on Saturday he decided he wanted the house job, so he went to the office and they gave him the house job and I took the Iowa Avenue job.

Q. Then you went down to begin work about seven o'clock?

A. Yes sir.

Q. Who composed the crew to which you were assigned?

A. Well, there would be a white man the foreman——

Q. Who was it I am talking about?

A. I don't remember his name.

Q. You don't know who it was?

A. I know who he was, but I don't know what his name is.

Q. Who was he then, if you don't know his name?

A. Well, he was a man that had worked there sometime before, and he came there and they employed him as yard conductor and gave him charge of this engine, and immediately after this accident he left the service and nobody could find him.

Q. You don't know him—you know he was a man—he was foreman of the engine?

A. Yes sir.

Q. Who was the engineer?

A. This man's name—I am quite sure it was McGowan—something of that kind.

95 Q. Who composed the balance of the crew?

A. I don't know the engineer's name, and the fireman, and the other people—I never heard their names at all—I have heard the engineer's name.

Q. Had you done any work with this crew at all up to the time you were injured?

A. No sir, just started.

Q. Where was the engine at the time you claim to have been injured?

A. The engine was at the water plug where they take water.

Q. How far was that from where this track is?

A. Just a short distance.

Q. About how far?

A. Well, fifty yards approximately.

Q. Don't you know it to be a fact that in shoving those tracks in the Memphis yards that the engine always, and was done on this occasion, should to shove these cars at the east side of that yard instead of the west side?

A. No sir, I have worked in that yard as helper before, and we invariably start at track 21—start at the west side and shove to the east side.

Q. Was that track 21 shoved that night at all?

A. I don't know whether it was or not.

Q. There wasn't any engine down there when you were down there—the engine hadn't gotten there?

A. My engine was ready to go—my foreman told me—they couldn't get down where I was.

Q. I mean down where the track was; had any cars on track 21 been moved at all?

96 A. Since I went down there.

Q. Since the time you joined that crew had any cars on track 21 been moved?

A. There was a tramp engine working there when I went to work.

Q. Working doing what?

A. Putting cars away on different tracks.

Q. Well, was it working on track 21?

A. I don't know as they were working particularly on track 21—if a tramp engine comes in there and leaves—

Q. I don't want to know the general custom—I asked you whether any engine was operating on track 21 while you were down there, moving the cars on it?

A. No sir, but you couldn't tell when one would—they run in every minute—they are there all the time.

Q. I asked you did your engine crew, or any other engine move any cars on that track 21 at that time?

A. No sir.

Q. Any time from the time you first began to work up to the last thing you remember about it?

A. No sir.

Q. None whatever?

A. No sir.

Q. Now, then, had that engine and crew with which you were connected, shoved any other of those 21 tracks there after you began work that night?

A. No sir, they had not.

Q. Had track #18 been shoved?

A. You mean from the Iowa Avenue end of the yard?

97 Q. Yes?

A. No sir.

Q. I mean by this engine that you were attached to?

A. No sir.

Q. Had track #17 been shoved?

A. No sir.

Q. Had track #16?

A. No sir.

Q. Or 15?

A. No sir.

Q. Or 9?

A. No sir.

Q. Or 8?

A. No sir.

Q. None of these tracks had been shoved after you went to work that evening?

A. Not that I know of. The foreman told me we would start on track 21 and shove, and we would start on 21 and shove it and step over on 20, and I would look out for the hind end of 20 and 19, and clear on down to the east end of the yard.

Q. You were to begin at 21 and shove the track out east instead of the other way?

A. Yes sir.

Q. Did you ever give any signal down there that night at all?

A. No sir.

Q. You never gave a signal of any kind?

A. No sir.

Q. The engine was not down there?

98 A. No sir.

Q. The cars were not down there—the cars were not being moved by anybody at all on track 21?

A. No sir.

Q. Your engine had not gotten there?

A. Well, the engine you see couldn't get to where I was.

Q. It could get down to that track couldn't it?

A. Yes sir, it could get to the track.

Q. It hadn't gotten down there?

A. No sir.

Q. You went down, and while you were there, and no engine there, the cars not being moved and nothing being moved at all, you just went on that car you say you went up on?

A. Yes sir.

Q. You don't know the number of that car do you?

A. Yes sir.

Q. You didn't give it awhile ago?

A. I. C. #131,704.

Q. Did you take the number down at the time?

A. No sir.

Q. How do you know it?

A. Mr. Earl and Mr. Lee told me.

Q. From what somebody else told you?

A. Yes sir.

Q. You didn't know it at the time?

A. No sir.

Q. You didn't know anything about what it was loaded with?

A. No sir.

Q. Did you know anything about how long it had been there?

99 A. No sir.

Q. When was the last time, according to your information, that the cars stationed on track 21 in that yard, had been moved at all, either in one direction or the other?

A. Well, you see I just showed up to go to work at seven o'clock and got hurt a few minutes after seven.

Q. You had been working in the yard ever since January?

A. These cars on 21 would be moved in and out all the time.

Q. When was the last time, according to your definite information, you can say the cars on that track 21 had been moved prior to the time of your accident?

A. I had put cars in there myself on Thursday night, and if I remember right, I didn't work Friday night.

Q. Did you know 21 was a track used as a storage track for the Company's materials?

A. No sir, I didn't know that.

Q. Isn't it a fact that this 131704 that you have reference to, was a car loaded with Company's material, which had been on that track for three weeks, right in the very spot which it was when you claim to have fallen off of it?

A. I had never seen that car there before.

Q. Had you ever observed whether it was moved away from there—had you ever seen the track prior to that time in three weeks?

A. No sir, I didn't see track 21—I didn't see but very few of those tracks. There was about four what we called open tracks, so trains could get in from the south and the north end.

Q. 21 wasn't one of them?

100 A. No sir.

Q. The cars on that track 21 were not being moved at the time?

A. No sir.

Q. And the engine was not there to move them?

A. No sir.

Q. It was up further on the track?

A. Yes sir, just getting ready to come in there.

Q. And you went down and climbed up on the side of this box car—you don't know what box car it was except by hearsay, as I understand—but you climbed up on a box car and fell off, and that is the last thing you recollect?

A. Well, I know it was the south box car in track 21.

Q. That is as near as you can identify it; you don't remember anything else after that time until you found yourself in the hospital—is that true?

A. I remember going up on the side of the ladder?

Q. I say after you fell?

A. After I fell, no sir.

Q. When you were taken to the hospital you had no recollection of how you got there, or how you got away from the point at which you fell, or whether you got up and went away yourself—you don't know that?

A. No sir, only what they told me.

Q. You didn't know anything about when you were taken to the hospital, but you were taken to the hospital and put in charge of the physician at St. Joseph's Hospital?

A. Yes sir.

Q. Now you say Dr. Malone is the man in charge of the institution?

101 A. I think he was.

Q. Well, he is a physician in Memphis—you know him and recognize him as being the head of that institution?

A. Yes sir.

Q. Who was the other physician—Dr. Rudysill?

A. Dr. Ruyssill was in the ward a couple of times.

Q. He was connected with that concern?

A. Yes sir.

Q. You stayed three weeks at the hospital, and then you got dissatisfied, as you say, with the situation, and pulled up and left on your own account?

A. Yes sir.

Q. While you were there—did those gentleman make an examination of you at the time—you talk about being on a table, I suppose that was an operating table——

A. Yes sir.

Q. They did make an examination?

A. Yes sir.

Q. Dr. Malone?

A. Yes sir.

Q. Was Dr. Rudysill there?

A. I couldn't say whether he was or not—I don't think he was—
Dr. Malone was there.

Q. Dr. Malone is a reputable physician in Memphis, isn't he?

A. I don't know sir.

Q. Well, he is the head of that hospital, isn't he?

A. Yes sir.

Q. He is a man who lives in Memphis—you say you stayed at the hospital and he made an examination of you. Then
102 you left there and went away voluntarily, didn't you?

A. Yes sir.

Q. After you went away you say you were examined again?

A. Yes sir.

Q. You were examined at Ohama?

A. Yes sir.

Q. Who were you examined by there?

A. I was examined by Dr. Harris first.

Q. When you went away—did you know Dr. Harris before you went away?

A. No sir.

Q. You never saw him before—how came you to go to him in Ohama?

A. Mr. Harrington represented and told me he was a good lawyer—a food doctor. Mr. Harrington, my lawyer, told me Dr. Harris was a reputable physician and a very smart man.

Q. You went to see your lawyer first?

A. Yes sir.

Q. Then he sent you to the physician in Ohama?

A. Mr. Harrington lives in 22 miles of my home—

Q. You were sent there by your lawyer?

A. I wasn't sent there by my lawyer, no sir. Mr. Harrington told me Dr. Harris was a very good physician.

Q. Now then, when you were examined in Ohama, you were examined by Dr. Hall of Chicago?

A. Yes sir.

Q. Well now, who is he—is he a reputable physician?

A. You can search me.

103 Q. Well, he searched you didn't he, at the time?

A. Yes sir.

Q. Who was there at the time of that examination?

A. Dr. Lord and Dr. Summers.

Q. Who is Dr. Lord?

A. A doctor at Ohama.

Q. Is he a reputable physician?

A. As far as I know—I am not acquainted with him.

Q. Who is Dr. Summers?

A. Physician in Ohama.

Q. Both live in Ohama, where Dr. Harris lives?

A. Yes sir.

Q. Were both of these gentleman there at the time this investigation was made?

A. Yes sir, and the I. C. Claim agent.

Q. Mr. Cobb?

A. Yes sir, Mr Cobb.

Q. He used to be down here?

A. Yes sir, I know him personally.

Q. Who else was there?

A. The girl that took the x-ray picture.

Q. Who else?

A. Dr. Harris.

Q. Dr. Harris—he was there present at the time?

A. Yes sir.

Q. Your physician was there—they made the examination and he was there?

A. Yes sir, Dr. Harris and three physicians for the company.

104 Q. Were you in the same condition at the time that examination was made by Dr. Hall, Summers and Lord, in the presence of Dr. Harris—were you in the same condition then that you had been all the time practically up to the time of this trial?

A. Yes sir.

Q. All these symptoms you refer to as having suffered, you were suffering with them at that time?

A. Yes sir.

Q. Your condition then at the time of this examination made by this Chicago man and by those two Omaha physicians, was the same as it had been all the time?

A. I don't understand the question?

Q. I mean all these symptoms that you have detailed to your

counsel here were present at that time just as they had been all the time; you had not recovered at that time had you?

A. No sir.

Q. Now I will ask you this—what about your muscles; what was the condition of your muscles at the time that examination was made by Doctors Hall, Summers and Lord, in the presence of Dr. Harris—what was your muscular condition at that time?

A. I don't understand what you mean.

Q. Well, were your muscles sore in any way?

A. Was my muscles sore?

Q. Yes, don't you know what I mean by that—were your muscles sore?

A. No.

Q. Have any pains in your muscles?

105 A. No sir.

Q. None whatever. Well, were the muscles in your legs in a normal condition, or was there anything the matter with them?

A. I don't believe I understand what you mean.

Q. I mean were your muscles sore; were your muscles in a normal condition. My muscles are in a normal condition in my arms—I want to know whether yours were?

A. In the arm, yes sir.

Q. How were they in the leg?

A. The same as they are now.

Q. The same as they had been all the time up to that time?

A. Yes sir.

Q. What I am trying to get at is, were the conditions that existed on the date the same as you have described to your counsel here as the condition ever since your injury?

A. Yes sir, just the same.

Q. I want to ask you if the joints of your body there—were the movements of your joints all right—any trouble about that?

A. No sir, they were all right.

Q. All right on that date?

A. Yes sir.

Q. Were there any deformities of any kind in the bones?

A. Just a movement please—I don't know whether I have any joint in my hips, but the movement in my hips, if any classify that joint in there—that was not good—I want you to understand that—

106 Q. Were there any deformities in your bones when they examined you that day, did any develop?

A. Not that I know of—yes sir, the x-ray picture showed that in my hip—

Q. Did the x-ray picture they took at that time show any deformity in the bones?

A. Yes sir, as far as I know an x-ray. I don't pretend to be a competent authority on x-rays, but I saw the picture they took, and what I know about an x-ray that showed the injury.

Q. I will ask you if it is a fact that they took an x-ray picture at that time, and it showed your spine and back and all that was in a

perfectly normal condition—absolutely nothing the matter with it; isn't that true—that the picture showed it at that time?

Q. You ask me if that picture they took didn't show my body is in a normal condition?

A. Yes sir, as far as your spine is concerned, and the very things you complain about—didn't they show that you are absolutely normal?

A. Why no.

Q. They did not?

A. They did not.

Q. How about your lungs on that occasion; they made a critical examination of you at that time?

A. Yes sir.

Q. Were your lungs all right at that time?

A. As far as I know.

Q. What was your chest expansion, do you remember?

107 A. I don't remember.

Q. Was your heart normal—the action of your heart normal?

A. They thought my heart was a little fast. It was up hill to Dr. Lord's office and I walked up there, and I remember them saying my heart was a little quick, and they thought possibly that was the reason.

Q. What was the condition of your liver and your stomach, kidneys and intestines, do you remember?

A. I can't answer for anything but my stomach. After Dr. Hall and Dr. Lord and Dr. Summers got through with me I had about all I could do to get to my room, and when I did get there I was very sick at my stomach.

Q. I will ask you if it is a fact that Dr. Hall, Dr. Lord and Dr. Summers, in the presence of Dr. Harris, made a careful and critical examination of you?

A. Yes sir.

Q. Is it a fact, at the time that examination was made, and on the day it was made, that your condition then was just the same as you have detailed here to your counsel that it had been since your injury; that you were suffering then with all the ills and ailments that you have described as having suffered up to that time?

A. Yes sir.

Q. At that time your condition was the same it had been—there was no difference?

A. No sir.

Q. And the conditions they found and saw in you, were the same conditions that had been with you ever since your injury at Memphis?

A. Yes sir.

108 Q. Now, I believe you say you did go hunting for prairie chickens?

A. Yes sir, I did.

Q. You didn't have any trouble getting around to shoot prairie chickens, did you, with these gentlemen that went with you?

A. Yes sir I did.

Q. You didn't have any trouble whipping your young dogs back when they tried to follow you—

A. Yes sir, I did, Mr. Perry held them.

Q. He held the dogs while you beat them?

A. While I took a buggy whip and whipped them—little pups about three months old.

Q. You went out on the prairie and shot those prairie chickens, didn't you?

A. I got in the buggy with the boys and we drove probably two miles and back.

Q. You didn't shoot prairie chickens while you were sitting in the buggy, did you?

A. No sir.

Q. You got out of the buggy and shot them on the prairie where they were?

A. Yes sir.

Q. Did you kill any?

A. No sir.

Q. You shot at them?

A. Yes sir.

Q. You scared them—you were able to do that al- right?

A. Yes sir.

109 Q. Then you were not in such condition that you just couldn't get around at all, and couldn't walk, like you seem to be, were you? Was your condition any better than it is now?

A. When I got home that day from this trip—

Q. I am talking about while you were out shooting prairie chickens—you got around all right—you went out with a shot gun and went bird hunting like any other man?

A. In a buggy.

Q. Well, you got out of the buggy and hunted?

A. Got out to shoot. The dogs set them right close to us and I just stepped out of the buggy and shot.

Q. How far did you have to go?

A. Probably 20 yards. I was not over twenty yards from the buggy.

Q. You would shoot them and go somewhere else and they would set them again and you would get out again?

A. No, the buggy came up to me and I got in the buggy. When I got home that night between 5 and 5:30 I went directly to bed, and was in bed that night and all next day.

Q. You don't know anything more about Dr. Harris than you do about Dr. Malone?

A. I know Dr. Harris is chief of police surgeon- at Omaha—he is the head of the surgical department—

Q. Dr. Malone is the district surgeon in Memphis, isn't he?

A. Yes sir.

Q. You don't know anything more about Dr. Harris than you do about Dr. Hall, as a physician?

A. Yes sir.

110 Q. Who is Dr. Hall?

A. I don't know, I just met him, thats all.

Q. Who is Dr. Lord?

A. A doctor in Omaha. That was the first time I ever was in his office.

Q. Dr. Summers, did you know him?

A. I met him that day.

Q. They are all physicians up there in Omaha?

A. Yes sir.

Q. Dr. Harris is an Omaha physician, Dr. Summers is an Omaha physician, and Dr. Lord is an Omaha physician?

A. Yes sir.

Q. Dr. Hall is a physician from Chicago, Dr. Malone from Memphis, and Dr. Rudysill from Memphis?

A. Yes sir.

Q. You didn't know any of these gentlemen until after you got hurt?

A. No sir.

Q. And you met them in the course of your travel around in that connection?

A. Yes sir.

Q. They are all physicians, and that is all you know about them?

A. Of course I know more about Dr. Harris than any one else, from being at his office.

Q. Do you know anything about how long this car that you — up on at Memphis had been where it was?

A. No sir.

Q. Do you know anything about when it was put there?

A. No sir.

111 Q. You don't know anything about that?

A. No sir.

Q. When was the last work you did before you started out that evening?

A. I had charge of an engine as yard conductor.

Q. In what part of the yard—that same neighborhood?

A. Well, we would be in there, yes sir.

Q. How do you mean having charge of the engine—running the engine?

A. No sir, in the yard service, when you say you have charge of the engine that means the same as a conductor on a freight train.

Q. Acting as foreman?

A. Yes sir.

Q. Then you had been discharging the duties as engine foreman the day before?

A. Well, a night or two before that I had been off one or two nights.

Q. And had not been doing anything?

A. No sir.

Q. What had you been doing during that day immediately previous to your accident?

A. I was at my room—my boarding house——

Q. You had not been at work is what I am trying to get at?

A. No sir.

Q. You don't remember the names of a single man connected with this crew you were working with, except the engine foreman?

A. That's all.

112 Q. Conner—is that what you said?

A. No, I think it was McGowan, but I am not sure.

Q. Did I understand you to say that you have never been sick before?

A. I said I had never had any serious sickness.

Q. What you call serious sickness?

A. Well, dip-theria, or something of that nature.

Q. Are there any other diseases you think are serious?

A. Oh, there are lots of diseases I think are serious, but diseases of that nature—I never had any serious sickness.

Q. You never had dip-theria?

A. No sir.

Q. You have been sick prior to this time, hadn't you?

A. Well, I have had a headache.

Q. Is that all?

A. Different things of that kind; I wouldn't call that sickness though.

Q. Is that all you had the matter with you?

A. All I can remember—all I could think of.

Q. Did you give a history of these diseases to those physicians that examined you in Omaha?

A. Yes sir, they ask- me that—I remember that.

Q. Do you remember what you told them?

A. No sir, I don't.

Redirect examination by Mr. Harrington:

Q. This Dr. Hall referred to, is he the Hall that goes around swearing as an expert for the Illinois Central, Missouri Pacific, Iron Mountain, Burlington, Chicago and Illinois, Pacific and Ohio Railroads, and many other railroads—that is the man is it?

113 A. Yes sir, thats him.

Q. These other two doctors at Omaha, Lord and Summers—are they both Railroad Doctors?

A. I can't say about Dr. Summers.

Q. Are they both reputed to be?

A. Yes sir.

Q. As men who testify for the railroad?

A. Yes sir.

Q. Dr. Harris is not a railroad doctor?

A. No sir.

Q. Were there other cars to the north of this box car on this track?

A. Yes sir.

Q. Commercial cars?

A. Yes sir.

Q. Loaded with different things?

A. Yes sir.

- Q. How far from the end of track 21 was your engine?
 A. About as far as from here to the middle of the street.
 Q. On the main line of the lead?
 A. On the lead.
 Q. Which was part of this yard?
 A. Yes sir.
 Q. Which track were you to start on first?
 A. Track 21.
 Q. About how many cars are there all told on this track 21?
 A. Probably twenty five or thirty.
 Q. Do you know the length of track 21.
 A. No sir, not exactly.
- 114 Q. Take the north end of the string of cars on 21, about how far was it from that to the lead?
 A. Probably ten car lengths from the first car in track 21 to the lead, and there were gaps all through there. They would close those gaps to make room at the north end. I was going to set that brake so as to keep from pushing them out.
 Q. Close the gap so as to put more cars in the
 A. Yes sir.
 Q. Who was it, if you know, that gave the information to both Earle and Lee to go and find this box car for you fell?
 A. Well, when I come to at the horse Earle was with me—
 Q. Answer my question—who gave the information?
 A. I did.
 Q. Where did you tell them to look for it?
 A. I told them to go to the south end of track 21 and they would find this car next to the gondolas, on the south end of track 21.
 Q. Beside Earle and Lee, do you remember whether you told any other persons where they would find this car?
 A. Yes sir, several come to see me and ask how I got hurt and I told them on which car.
 Q. Did you tell this fact to Earle and Lee?
 A. Yes sir.
 Q. Do you remember any others that you told where they would find this car from which you fell?
 Objected to as incompetent.
 (Question withdrawn.)
- 115 Q. Do you personally know anything about the taking of an x-ray?
 A. Yes sir.
 Q. Just to the extent that they have used them on you?
 A. Yes sir.
 Q. Do you know whether these x-rays Hall took were taken to show the condition or to conceal it—do you know?
 A. No sir.
 Q. Did any — else take an x-ray of you before that?
 A. Dr. Harris has taken them?
 Q. He has them now?

A. Yes sir.

Q. And you are going to have some more taken right here to show the condition?

A. Yes sir.

Recross-examination by Mr. Wells:

Q. You say you went to Dr. Harris because Mr. Harrington sent you?

A. I went to Dr. Harris because Mr. Harrington told me Dr. Harris operated, and was a very good physician and a reputable man. I stayed at the Pacton hotel and that was in a block and a half of where I was staying, and this was before Dr. Harris put this steel brace on me, and I wasn't able to be up only a short time at the time, and Dr. Harris' office was in a block and a half of the hotel and that made it more convenient to go to him.

Q. Is he the same Dr. Harris who is reputed to be a fine medical witness to testify against railroad companies in Mr. Harrington's interest, prosecuting these suits in Indiana, Kansas, Nebraska and Iowa?

A. I don't know.

Q. You don't know about that?

A. No sir.

Q. All right.

Redirect examination by Mr. Harrington:

Q. You never knew him to be a witness for me?

A. No sir.

Q. You have never known him to perform a surgical operation on any of my clients?

A. No sir.

Q. So far as you know Dr. Allison, the best surgeon in Omaha, does all of my work?

A. I know he did one thing for you?

Q. He is the best surgeon in Nebraska, ain't he?

A. We all think he is.

(Witness excused.)

(Court here adjourned till 9 o'clock tomorrow, at which time court convened, and the following proceedings had)

117 In the Circuit Court of the First Judicial District of Hinds County, Mississippi.

GEORGE R. WILLIAMS, Plaintiff,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY, et al., Defendants.

Agreement of Counsel.

It is between Messrs. Watkins and Watkins, attorneys of Record for the plaintiff, George R. Williams, and Messrs. Wells, May and

Sanders, attorneys for the defendant, that the deposition of C. T. Earle, a witness for the plaintiff, may be taken before John B. Ricketts, Notary Public, and taken down by R. S. Streit, Stenographer, and when transcribed may — used at the hearing of this cause; and all formalities of notice, etc., are hereby waived, reserving only the usual objections for irrelevancy, incompetency and immateriality.

Witness our signatures, this the 20th day of October, 1914.

WATKINS AND WATKINS,
Attorneys for Plaintiff.

WELLS, MAY AND SANDERS,
Attorneys for Defendants.

118 C. T. EARLE being produced and first duly sworn, testified as follows:

Direct examination by Mr. H. V. Watkins:

Q. Give you- name to the Stenographer, Mr. Erle.

A. C. T. Earle.

Q. State your age, place of residence and present occupation?

A. Well, I was twenty-nine years old on the 20th day of August last; present residence is 1141 Raybourn, Memphis, Tennessee; now employed as flagman for the Illinois Central Railroad, Tennessee Division.

Q. How long have you been in the employ of the Illinois Central Railroad Company?

A. Well, do you mean at intervals, or this one time?

Q. This time?

A. Since September—I forget the exact date—but a year ago last September I hired to the Illinois Central this last time, somewhere about the 22nd I would think. Somewhere about the 22nd—this last September a year ago.

Q. By whom were you employed about the first of January 1913?

A. You mean where was I working then?

Q. By whom were you employed?

A. I was employed by the Y. & M. V. in switching, in the Memphis Terminals.

Q. Where was your place of residence at that time?

A. Why, 260 Simpson, Memphis, Tennessee, Mrs. Lee was running the boarding house.

Q. How long did you remain in the employ of the Yazoo and Mississippi Valley Railroad Company?

A. Until April 17th.

Q. I will ask you to state if you are acquainted with George R. Williams, the plaintiff in this case?

A. I am.

119 Q. How long have you known him?

A. Well, ever since somewhere about January, 1913.

Q. What was Mr. Williams doing at that time?

A. He came to Memphis and hired out to the Y. & M. V. as switchman there in the yards.

Q. Please state to the court how well, or intimately did you know Mr. Williams?

A. Well, when Mr. Williams first came to Memphis and hired out to the Y. & M. V., he came to Mrs. Lee's to board, where I was boarding at the time; she placed him in the room with me, and he and I roomed together, I will say, about two months, when afterwards he moved to a front room; my room wasn't a front room, and he took a front room up several doors from me.

Q. What occasion did you have to see him after that time?

A. Well, at meal time, or at any time we were both in the house together, as the boys all stood out in the halls and around and talked.

Q. You mean to say he continued to take his meals at the same place?

A. Yes sir, and still roomed at the same place, but not in the same room with me after we roomed together two months.

Q. Mr. Earle, state to the court what Mr. Williams physical condition during the time that you knew him that you have just testified about?

A. Well, as far as I knew, Mr. Williams seemed to be in good health at that time. I never noticed anything being wrong with him.

Q. Did you ever see Mr. Williams undress, or go to bed, or in dressing, or anything of that kind?

A. Yes sir.

Q. Did you ever notice, or have him complain of any physical ailment at all?

120 A. No sir.

Q. Did you ever have occasion to notice how he slept at night, or anything of that kind?

A. Why, not in particular. He never—in fact, I slept myself pretty sound, and he never kept me awake, or anything like that, of that's what you are hinting at.

Q. Now, in what yards was Mr. Williams employed?

A. He was employed in the Y. and M. V. yards. You mean what section of the yards?

Q. You have stated in the Y. and M. V. Yards; in what section of the Y. and M. V. yards?

A. Well, he was—a man working in the Y. & M. V. yards, he works extra until he obtains a regular job, and an extra man is required to work in any part of the yards he is called to fill a regular man's place until he gets old enough to hold a regular man's job, and by that I think he worked in all parts of the yards.

Q. Do you know what Mr. Williams position and duties were?

A. Yes sir, his position as helper on the engine at the—there are two negro helpers and one helper, the white man is supposed on transfers to ride the hind-end, and he is supposed to look after—to see how many cars is in a track, and keep brakes tight down on them so they won't shove them through—so in kicking cars in there they won't shove them out the other end; supposed to keep these cars tied down so they won't run out the other end, and see

how many—in other words, to report to the foreman when the track is full. Supposed to line switches, and ride cars, and set brakes on them, and so on.

Q. Mr. Earle, I will ask you to state as to whether or not Mr. Williams' services with the Yazoo and Mississippi Valley Railroad at that time was continuous or not?

A. You mean whether he would work every day or not?

Q. That's the idea, yes sir.

A. Well, I don't think he would work every day on account of being an extra man; the extra men hardly ever get every day's work. But he would work at every opportunity up until that time.

Q. Mr. Earl, do you remember the occasion when Mr. Williams was injured.

A. Yes, sir.

Q. Please state to the Court as to whether or not you and Mr. Williams were rooming together at that time?

A. No, sir; we were not rooming together at that time; we were boarding at the same place. We had done quit rooming together about two weeks when that happened—when he got hurt.

Q. How often did you see him about that time?

A. Well, from once to twice every day.

Q. Do you remember about the day and time when Mr. Williams is said to have been hurt?

A. Yes, sir.

Q. Tell the Court what it was as best you remember, please?

A. It was on the night of March 15th, about—somewhere about seven fifteen.

Q. Where were you when you learned that Mr. Williams had been hurt?

A. At the south yard office, up stairs; I went up there to mail a time slip for my day's work, and some one came in—I had just finished my day's work, I was working days—and some of the boys came in and said Williams got hurt at Iowa Avenue, and I asked them what Williams that was.

By Mr. Geo. May: We object to all of that.

By Mr. V. H. Watkins: That is all immaterial; he was just telling how he came to know it.

By Mr. Geo. W. May: I just want the objection to show that I objected to the immateriality of the conversation between this witness and the other employees.

122 A. They told me Mr. Geo. R. Williams. On finding out he had gotten hurt, he and I had been rooming together about two months, why, I went to Iowa Avenue to see about him, and when I got to Iowa Avenue they told me he was in the car knocker's shanty; I went over there and found him in the car knocker's shanty lying there, seemed to be unconscious. I was very well acquainted with him and called him and tried to get him to tell me what was the matter with him and what was hurting him, and he didn't make any reply, only occasionally groaned. I asked them if the doctor and ambulance had been called, and they told me they had.

Q. Who told you that?

A. Why I don't know for certain who it was.

By Mr. Geo. W. May: We object to all that conversation for the same reason, that it is hearsay, and incompetent and irrelevant.

By Mr. Watkins:

Q. Al- right, go ahead Mr. Earl?

A. Well, I stayed there ten or fifteen minutes and the ambulance came and Dr. Rudisell came and examined him—he is the I. C. physician—examined him, and we carried him to the ambulance, which was some little distance down the road and put him in the ambulance, and I went to the hospital with him.

Q. State to the Court as to what Mr. Williams' condition was at that time?

A. At the time we put him in the ambulance?

Q. Yes, sir.

A. Why, he was still unconscious. He wouldn't say anything or move at that time, until after they had him on the operating table at the hospital.

123 A. I was.

Q. State to the Court as to whether or not he was undressed when the examination was made?

A. Why, yes, he was undressed from his shoulders down to his knees, the best I can recollect. I know they stripped him down to the knees.

Q. I will ask you to state to the Court as to whether or not you saw or observed any bruises or discolorations on his body?

A. Why, there was a place about the size of a dollar, I suppose, turned a bluish color, right in the small of his back—what I call the small of the back—along about between the two hips, in the small of his back.

Q. Stand up and show the stenographer, and he can indicate in his notes the point you are pointing out?

A. The best of my recollection right along in here. (Witness here placing his hand on the back, near the middle of the back, about an inch above the hips.)

Q. What kind of a place was that?

A. Well, it was just a bluish color; looked like it was bruised, or something like that to me.

Q. I will ask you to state if you had any conversation with Mr. Williams that night?

A. Yes, sir; he came to, he was on the operating table when he came to, they were examining him, and he came to and he opened his eyes up and asked me where he was at and what happened, and I told him he was in the hospital.

By Mr. Geo. W. May: We object to that question and answer and move to exclude it as a self-serving declaration on behalf of the plaintiff and hearsay.

By Mr. V. H. Watkins:

Q. Al-right; go ahead Mr. Earl?

A. Well, then, I stated that I had a conversation with him in there.

124 Q. Well, I will ask you to state now as to whether or not he told you where he got hurt?

A. Yes, sir.

By Mr. Geo. W. May: We object to that and move to exclude the answer, the witness having answered before the objection could be interposed.

By Mr. V. H. Watkins:

Q. Tell the Court, now, what he told you, and if he made any request of you?

By Mr. Geo. W. May: We object to that question as incompetent and irrelevant and immaterial, and as hearsay, and self-serving declarations of the plaintiff.

By Mr. V. H. Watkins:

Q. Go ahead and answer it?

A. Why, yes, sir; he told me that he got hurt down in the yards. He had gone up on the last box cars on 21.

Q. What do you mean by 21?

A. That's track number 21 in the south yards of Memphis. The tracks number from one to twenty-one—that he had gone up on this car to set a brake to keep from shoving it out in the side of #20, and that one of the grab irons had pulled loose with him and he had fallen.

Q. Now, will ask you to state if he made any request of you?

A. Yes, sir.

Q. What was it?

A. He asked me to go by and see if the grab iron was pulled out of the car—the last high car on 21.

Q. I will ask you to state if you did so?

A. I did.

Q. State to the Court where you went, and what examination you made, and with what results?

125 A. Well, I was on my way back from the hospital to this boarding house; I went down 21 to the last high car, and I had my lantern lit walking along there, and I saw shattered glass around there, and looked like somebody had fell right below the ladder on this car on 21, on the west side of the car, the north end of the car, and so when I found these marks here I climbed up on top and examined the grab iron, and I found the top grab iron had pulled loose at the north end, had a bolt in the grab iron and it had pulled through the wood.

Q. State to the Court what side of the car was the ladder on, and which end of it you found the grab iron as you have described?

A. It was on the east side, and the north end of the car.

Q. What end of the grab iron did you state was pulled loose?

A. The north end.

Q. What do you mean by the grab iron?

A. The hand hold that you hold on to in climbing up on the cars, and place your feet on them and hold to them.

Q. I will ask you to state to the Court if you examined that grab iron, located as you say.

A. I examined it, yes, sir.

Q. What was its condition?

A. Well, the grab iron had pulled through the wood; that is, the bolt that held the grab iron had pulled through the wood, the north end—came on out of the wood.

Q. Do you know why it pulled out?

A. Well, the wood was rotten, the two planks rotten where the bolt had gone through, and it seems this was pulled thorough, and I noticed a little split piece where a piece of wood had split off of one of the planks.

Q. I will ask you if you noticed any other marks, or anything of that kind on top of the car?

A. Yes, I noticed the mark right under the paint on top of the car, it had a mark like the end of the bolt had rubbed there
126 when it pulled out, a place about I will say three or four inches long, marked there like a scratch you know.

Q. Please state to the Court what was the condition of the wood where the bolt which held the grab iron had been?

A. Well, it is rotten. Looked like it had a dry rot to the best of my recollection.

Q. Mr. Earl, I will ask you to state to the Court how were you able to find the location of this car?

A. Mr. Williams told me where it was.

Q. What had he told you in regard to the location of the car?

A. Told me it was the last high car on the south end of #1; there were three or four gondolas between that and the end of the track.

Q. You said #1; do you mean #1?

A. I mean 21, yes, sir; told me that it was the last high car on the south end of 21.

Q. I will ask you to state what was the initial and number of that car, if you recollect?

A. I. C. 131704.

Cross-examination by Mr. Geo. W. May:

Q. Mr. Earl, I believe I understood you to state in answer to Mr. Watkins' question that you were first employed by the Illinois Central Railroad?

A. How was that?

Q. You say you were first employed by the Illinois Central Railroad Company? You are now employed by the Yazoo & Miss. Valley Railroad Company?

A. No, sir; I am in the employ of the I. C.

Q. Well, I just misunderstood you. You were first employed by the Y. & M. V.?

A. I was first employed by the Y. & M. V., switchman in the yards.

Q. When did you first go to work for the Y. & M. V., Mr. Earl?

127 A. Let's see—in August, I think it was—August 8th, 1912.

Q. August 8th, 1912. How long did you work then for the Y. & M. V. continuously from August 8th?

A. I left the service in April, the 17th, 1913.

Q. April 1913, and then when were you employed by the Illinois Central after April 1913?

A. I was employed somewhere about the 22d of September 1913.

Q. Now, from April to September what was your employment Mr. Earl?

A. Well, from April to September, I worked forty-five days for the Kansas City Southern out of Shreveport, Louisiana, and I worked seven days for the C., B. & Q. out of Sterling, Colorado; after I left Sterling I came back home and went back to work for the I. C. at Dyersburg.

Q. You were working for the Illinois Central at Dyersburg? What time did you go to work there?

A. That's the time I went to work for the I. C. in September—about the 22d of September to the best of my knowledge.

Q. Did you go then from Dyersburg to Memphis?

A. I was transferred from the yards at Dyersburg to the road in March.

Q. March of what year, 1913?

A. 1914.

Q. 1914?

A. Yes sir. And I have been working—flagging—transferred from the Dyersburg yard to the road in March 1914, and I have been flagging out of Memphis most of the time since then.

Q. Well, now, I don't know that I quite understand just when you went to work at Dyersburg, Mr. Earl?

A. In was somewhere about the 22d day of September.

Q. 1913?

A. 1913, yes sir.

Q. Well, now, this injury occurred March 15th, 1913, didn't it?

128 A. Yes sir.

Q. So then the injury occurred before you worked at Dyersburg, about six months?

A. Yes sir; something like that.

Q. And at that time you were working in Memphis, when the injury occurred?

A. Yes sir.

Q. And had been since that time?

A. Since about somewhere—about the 8th of August 1912.

Q. August 8th 1912, and it was before August 8th 1912 then, that you worked at Shreveport?

A. No sir.

Q. Sir?

A. No sir.

Q. Well, when was that?

A. I quit the Y. & M. V. at Memphis, April 1913.

Q. I see?

A. And went over there to Kansas City, and from Kansas City I hired out to the Kansas City Southern, braking out of Shreveport, worked forty-five days, and quit and went to Colorado.

Q. Now, your first work was with the Y. & M. V., as switchman, was it?

A. Yes sir.

Q. And you continued to work with them as switchman all the time until you left the service, did you?

A. Until I left the service of the Y. & M. V.

Q. And then when you went back to work, you went with the I. C., and you went to work with them as flagman?

A. No sir; as switchman.

Q. Switchman at Dyersburg?

A. Yes sir.

Q. And after you quit working for them as switchman, you were transferred to Memphis to the road?

129 A. To the road on the Tennessee division.

Q. And you have been there under that employment continuously up to this time?

A. Yes sir.

Q. Now, Mr. Earl, the duties that you speak of enjoin upon the switchman are defined by what is known and what is called by the railroad folk as a book of rules, isn't it?

A. Well, there is a lot in the book of rules; of course, you are supposed to live out the book of rules, and then on top of that you have special instructions, such as bulletins they hang up in addition to the book of rules.

Q. Now, those books of rules are in writing or printed matter are they?

A. Yes sir.

Q. And those bulletins which you speak of are in writing, or printed matter?

A. Yes sir.

Q. And your testimony as to the duties of a switchman is your recollection of what those writings contained?

A. The best of my recollection, yes.

Q. Now, you say that Mr. Williams was working as what is known as an engine jumper?

A. Yes sir; they have helpers; they pay them less than they do the engine foreman. Each engine is occupied by a foreman and two or three helpers, owing to the job that they are on.

Q. Now, you say he went to work——

A. In other words the helper is under the direction of the foreman.

Q. Now, you say Mr. Williams went to work there, according to your recollection as helper—engine helper—with the Y. & M. V. Railroad in Memphis, some time in January 1913?

A. To the best of my recollection somewhere along there.

Q. And he was working then with the Y. & M. V. Railroad as engine helper from the time he first went to work there in January, 1913, until he got hurt on March 15th, 1913.

130 A. Yes sir.

Q. And you say that during that time he was known as an extra man?

A. Extra man, yes sir.

Q. And that means that sometimes he is employed and sometimes he isn't, just as the emergency arises in the transaction of the business, does it?

A. No sir; it doesn't mean he is not employed.

Q. I mean actually at work?

A. Yes sir; actually at work. They have a board, and each man's name is placed on the card and placed on this board.

Q. And each man according to his regular station is called as they need those men?

A. The first man at the top is called, from the top to the bottom as the extra men are used.

Q. Now, in addition to the duties as defined by the book of rules and the bulletins, there is what is known as instructions and a written warning that serves to further define the duties that a man is required to sign when he enters the employment, Mr. Earl?

A. Warning, you say.

Q. Yes, written contract that a man is required to sign along with his application for employment?

A. Yes.

Q. That is a printed form that defines in a general way the duty of the employee and gives him certain warning and instructions about the performance of those duties and the dangers incident to the performance of those duties?

A. Well, I don't know; to the best of my recollection—I don't know whether there is anything particularly about the duties in this special printed matter that you are speaking about or not; but there are warnings—a number of them—such as overhead bridges, and such things as that.

Q. Well, irrespective of what it might show if it was produced, Mr. Earl, what I am trying to get at is, one of things, documents, or whatever it is, or whatever is in it, each of the
131 employees signs one of these when he applies to the railroad company for work.

A. Yes sir, signed one in addition to my application.

Q. And that's one of the printed forms that the railroad company furnishes for the employees to fill out along with his application?

A. Yes sir.

Q. I believe that you stated that you were working day at the time Mr. Williams got hurt?

A. Yes sir.

Q. Where were you working?

A. I was on what is known as the "bim engine," or transfer engine, to make it more plain to a man that is not acquainted with that line of work.

Q. Now, were you working in the same capacity as Mr. Williams—as switchman?

A. Yes sir. This day I think I was engine foreman.

Q. You were engine foreman for the day?

A. I had a regular day light job of helping, and they used me as extra engine foreman, when they were short engine foremen.

Q. What was the number of your engine on that day, March 15, 1913?

A. I don't know sir.

Q. Did you have a regular engine, or did you change engines, just take any engine that would be furnished?

A. Well, you take—they have as near as possible regular engines on the regular jobs, but on this transfer engine, or "bum engine" job they call it, they use the engine that was in condition to use.

Q. Well, do they use more than one engine for the same sort of work you were doing there?

132 A. Well—

Q. Was a transfer engine at that place on that date?

A. Well, I don't know whether they used more than one on that day or not, but they had used as high as two or three transfer engines.

Q. Who were the members of your crew on that date?

A. I don't remember them either. It could have been engine 844, as to the best of my recollection I believe we were using that engine along about that time; but I never did keep any record more than to put it in the time slip, the day when I worked, at night — put the engine No. on the time slip.

Q. Now, did you make any report for that day that would show what engine you were handling and what crew you had? You said something about filing some report?

A. My time slip; that time slip would show yes, sir, the original time would show.

Q. The original time slip that the engine foreman files will show the members of the crew and the No. of the engine?

A. Yes sir.

Q. And that's filed with the officer of the company?

A. Why, it is turned into the time keeper at Memphis.

Q. And at that time who was the time keeper?

A. I don't know sir, what the time keeper's name was; they always had one of these boxes there in the superintendent's office—one special box in the superintendent's office, for the time slips to be placed in, and the clerk would take them to the time keeper.

Q. Now, if you were engine foreman on March, 15, 1913, the day before the injury happened that night, there was a white helper—engines helper—whose duty it was to ride the rear end of the cut cars, was there?

A. Yes sir.

Q. And you don't remember who he was?

133 A. No, I don't remember even whether I was foreman or helper that day, but it appears to me I must have been foreman by going up to mail my time slip.

Q. That's the foreman's job?

A. The foreman's duty unless he sends it by his helper, white helper—and he don't have to go by the office himself.

Q. What time of day was it when you filed your report?

A. About seven thirty p. m.

Q. What were your hours?

A. We were supposed to work from 7 a. m. to 6 p. m. but on this transfer engine sometime we wouldn't get in until 9 or 10 o'clock, *going* to whenever they got through with us.

Q. What were the places between which this transfer engine operated, Mr. Earle, at that time?

A. The two places.

Q. Yes sir, or did it have any regular starting or stopping place?

A. Our regular stopping place and regular tie-up place at night was the south yards, right by the switch.

Q. Now, that is the south end of what? I would call the run was it?

A. No sir, the middle of it. In the morning the engine would come out and we would go out in the south yards—they Memphis Y. & M. V. yards is made up Nonconnah yards then comes south yards, that's the extreme south of the yards then comes what is known as south yards then Grab Hill, and then Beale Street, and then Poplar Street, and then Navy Yards, and then last is North Yards. Now, my job was to get a cut of cars in the morning and south yards—that's where the engine came out—take them to Nonconnah and get a cut of cars at Nonconnah and take them to North

Yards—that's the extreme from the south end of the yards
134 to the North End, and then eat dinner there and get another cut of cars from North Yards and carry them to South Yards, or Nonconnah, which ever place they were designated to. If it so happened to be a south yard cut, why, we would pull those in the clear and get a cut and carry them to Nonconnah and then bring another cut of cars back there, and generally always completed the day's work.

Q. Now, Mr. Earle, you say when you want to file this report in the time keeper's office that somebody there told you Mr. Williams had been hurt?

A. Yes sir: some—or it might have been the assistant yard master, or some switchman, some night man anyhow, some man working at night come past and said George Williams had been hurt.

Q. And how far is it from the time keeper's office where you filed this report to the place where you found Mr. Williams lying.

A. Fifty car lengths.

Q. Now, the office where you filed this report is fifty car lengths south of where Mr. Williams was hurt?

A. Yes sir.

Q. Now, what track comes into the office there; is there any one of those car tracks you speak of?

A. Now, understand me; this is fifty car lengths south of where he was when I got to him, not where he was hurt; but where I found him.

Q. I understand; where you found him?

A. Yes sir; what was your last question.

Q. The last question I asked you was, what track went into the office, *no* was there more than one track going in there.

A. Well, they begin on the—next to this time keeper's office as you call it, is the general official's office where the slips were deposited. You want to know how many tracks were between that and twenty one? The north bound main line is next to the division office, next comes the south bound main line and then begins one, two, three or over to 21; that is over to number 20, number 135 20 reaches the full length into the lead; the lead is what we call all the switches—they have one rail track straight down on the outside, and these tracks lead off from it, and number 20 reaches to the lead, and number 21 comes into the side of number 20, about 12 or 14 car lengths north of the end of the lead.

Q. In other words, number 21 is about 12 or 14 car lengths shorter than track 20?

A. Yes sir.

Q. Now, track 21 is the extreme west track in these yards, isn't it?

A. Yes sir.

Q. That's over next to the railroad buildings where they handle railroad material?

A. Yes sir.

Q. And as you go back east then, why, you come to the main line do you not, from track 21?

A. You come to it after you walk over twenty tracks.

Q. That's what I say; going back east you strike the main line and there were some other tracks east of the main line are there.

A. Yes sir: the shops—the rip track and record track, and different tracks between the company's shops.

Q. Now, then, when you got to where Mr. Williams was—he was there on that track?

A. He was in the car knockers shanty at what is known as Iowa Anebue. The bar knockers' shanty is up at that end. He was at the extreme of these tracks, laying on a cushion in the car knockers' shanty.

Q. When you got there who was there?

A. Well, I can't call their names; I don't know whether any body was right in the office with him or not. I remember asking some of the switchmen around there where Williams was, and they told me he was over in the car knockers shanty.

Q. Now, you can't remember, then, whether or not there was any body where he was when you reached him?

A. I don't — whether there was any body in there with 136 him then or not; but there were several in and out of there between time and the time the ambulance came and the Dr. came.

Q. How long was it from the time you got there that the ambulance came and the Doctor came?

A. About ten or fifteen minutes.

Q. Do you remember who it was that came in and out around where Mr. Williams was before the Doctor got there and before the ambulance got there?

A. Well, no, I don't for certain, there was a fellow named Way

up there at the -nd of the yards, and a fellow named Roy Fayland up at the end of the yards—he was night yard master up there at Iowa Avenue, but whether he was in and out of that office I couldn't say.

Q. Your best recollection is, then, Mr. Earle, that you can't give us the names of any body that came in and out?

A. No sir, I wouldn't attempt to give the names of anybody that came in and out.

Q. Before the Doctor got there?

A. No sir.

Q. Now, when the Doctor came you say he made an examination of him?

A. Yes sir, he shook him as I had before; that is, put his hand on him and shook and called him.

Q. Did he give him anything, or do anything for him while you were there?

A. No sir.

Q. Who was there when the doctor came beside you and the other—

A. Well, as I said before, I am not positive of any names as to who were there?

Q. There were several people around there?

A. Yes sir, when the doctor came that caused excitement and several got in and around to see him. I remember the Doctor saying "stand back and give him plenty of air."

137 Q. Did you help to *het* Mr. Williams in the ambulance?

A. Yes sir.

Q. Do you remember who assisted you to do that?

A. Well, there were two men that go with the ambulance, one or two, and the rest of them were composed of night switchman around the yards there. There was one boy, I know his face well, I know him well, but I can't call his name at the present time. That was the boy that gave me a nickle to come back from the hospital on. I went out in the ambulance, and he gave me a nickle to pay my car fare back to town.

Q. Now, you say Mr. Rudisell was the Doctor?

A. Yes sir.

Q. Who came to see him there at the shanty?

A. Yes sir.

Q. And who made whatever examination was made at that time?

A. Yes sir.

Q. And then Mr. Williams was loaded into the ambulance and you went with the ambulance to the hospital?

A. Yes sir.

Q. What hospital was that?

A. The regular I. C. Hospital—the I. C. have a ward.

Q. What is the name?

A. I think it is the St. Joseph, if I am not mistaken.

Q. Where is it located in Memphis? What Street is it on?

A. Well, I don't know that even; I have been out there several times. I always ask somebody what car to take to go out to the

hospital—we all call it the I. C. hospital, because the I. C. have wards there that they take — of their men in.

Q. Now, when you got out to the hospital who was there waiting, if any one?

A. Nobody except the men and woman who work out there.

138 Q. Do you know any of them?

A. No sir.

Q. Did you know the doctor who was there?

A. No I didn't know any of the names, only I had saw him a time or two before.

Q. Do you know whether there is a Dr. Malone—do you know Dr. Malone?

A. No, I don't know Dr. Malone when I see him; Dr. Rudisell is the only one I know by name.

Q. Dr. Rudisell didn't go to the hospital did he?

A. I don't think he did.

Q. Well, was there one or more doctors there to meet him when he was brought in?

A. He was carried in the hospital, and there was three or four men there with white jackets on, I don't know whether they were all doctors or not.

Q. Don't know whether they were doctors or internes?

A. Or nurses.

Q. Who made the examination of him? Who stripped him?

A. Well, these four fellows—the four fellows with white jackets on; I don't know any of their names.

Q. Who examined him?

A. It seems to me the doctor—the head physician.

Q. He didn't have on a white jacket did he?

A. I think so—let me see.

Q. So then you don't really know—did more than one of them examine him?

A. Why the whole bunch was talking about him and examining him, and feeling of him all over.

Q. All of that happened while he was on the operating table?

A. Yes sir.

Q. They took him and put him on the operating table and stripped him, and some of them examined him, and all of them discussed the situation?

139 A. Yes sir; talking about where he was hurt and how he was hurt and whether he was hurt bad and so on.

Q. You say you discovered a place about the size of a dollar, a bluish looking place between the hips in the small of the back?

A. Yes sir.

Q. That's the only bruise or sign of injury you saw?

A. That's all.

Q. Did you hear them make any observations about that?

A. Yes sir.

A. That's what attracted my attention to the spot?

Q. Was that a round bruise or oblong or what was the shape?

A. No, you couldn't call it exactly round but I would give the size of it as about the size of a dollar.

Q. And they turned him over, and when they turned him over on his stomach, you saw the bruise on his back?

A. Yes sir; when they turned him over on his stomach he hollowed—they kind wrenched his back and he hollowed, and they felt of his back and that's when I saw the blue place on his back.

Q. Now, did they give him anything? Or do anything for him while they had him there on the operating table?

A. Well, they—I wouldn't say for certain whether they give him any medicine or not; they never bandaged him up then anyway; they might have possibly given him a hypo, or something like that.

Q. You don't know for certain whether they did or not?

A. I don't know for certain. I would have known at the time then but couldn't say for certain now whether they gave him any medicine or not.

Q. How long did they keep him on the operating table?

A. Well, I didn't time them; I think it was——

Q. Of course I know you wouldn't know exactly?

A. Thirty or forty minutes from the time they put him —

140 Q. When they took him off the operating table, what did they do with him then?

A. They put him on the ambulance stretchers and carried him to the I. C. Ward and put him on the bed.

Q. Did you go to the room where he was?

A. I did.

Q. You went with them when they transferred him from the operating table into the room where he was put on the bed?

A. Yes sir.

Q. Did you stay in the room there with him after they put him to bed.

A. Yes sir; I stayed there and talked with him on the bed.

Q. Stayed there with him and talked to him for some little time?

A. Yes sir.

Q. Was anybody present when you were talking to him?

A. No one except the other people in the room. The room has probably eight or ten beds in it sitting around in different places and I know there were several others in there sick beside him.

Q. Were any of them employees about the hospital in there while you were in there?

A. No sir.

Q. With Mr. Williams?

A. Yes his nurse came in a time or two.

Q. Was his nurse a man or lady?

A. Lady.

Q. Do you remember her name?

A. No sir. I made another visit out to the hospital after that to see him before he had gone home. Out there again one night after I got off from work.

Q. Now, did he remain unconscious while he was on the operating table?

A. Yes sir.

141 Q. How long after they put him on the table? Before he was able to talk and before he did speak?

A. Well, it was just a little while—about the time they got through examining him, he opened his eyes and looked around at me, and I was standing right at his head watching him, and he looked at me a minute and says—recognized me, and says, Earle where am I at and what has happened? I told him that he was in the hospital and he got injured some how or other down in the yards.

Q. Was that the only conversation he had there with anybody there at the time while he was on the operating table?

A. With me was the only one that I remember only—no, the doctors stuck a pin in his leg and asked him if that hurt and he told them no, and what conversation he had with me is all that he talked when he was on the operating table.

Q. The only thing he said was in answer to the doctor's question when they stuck a pin in him that's the only thing he said to the doctors at all while he was there?

A. Yes sir.

Q. And then it was they put him on the rolling chair or what ever they had there to transfer him on, and carried him to the bed room?

A. A pair of those stretchers and carried him to the bed room.

Q. What else if anything, did he say to you in the operating room in the presence of these other men and the doctors except what you have just related, that he asked you where he was and what had happened to him? What else did he say to you?

A. Of course, after I told him he had been injured somewhere in the yards, I kept asking him if he knew where he got hurt, and then he told me yes, that it was on the extreme south end of the last box car on the south end of No. 21—that's the track No. 21—the last box car; that he started up there to set a brake to keep from shoving these back in the side of 20, and that the grab iron pulled off with him and he fell.

142 Q. Now, the way this conversation ran, then, if I understand your testimony, Mr. Earle, Mr. Williams asked where you was and what had happened to him.

A. Yes sir.

Q. And you told that he had gotten hurt some way down in the yards, and the- he stated to you, yes, I got hurt on the last box car at the extreme south end of track 21?

A. Last box car, but there were some three or four coal cars south of this box car.

Q. Is that all the conversation that you and he had, there in the presence of these other people?

A. He told me that his lantern was down there somewhere and asked me to go by and see if I could find his lantern, and I told him I would, and to look at this car.

Q. He told you then after that, that his lantern was down there somewhere and to go and see if you could find his lantern and then to go and examine this car?

A. He said the lantern ought to be somewhere about where this last high car was, the last high car on 21, and that the lantern ought to be there.

Q. In other words you understand that this lantern was where ever he fell?

A. Yes sir.

Q. And you understood that from what he told you?

A. Yes sir.

Q. Well, did you find his lantern?

A. Yes sir, laying between 19 and 20.

Q. You found the lantern between 19 and 20?

A. Yes sir. The lantern was mashed up and the globe was broken and glass shattered all around there between the tracks.

Q. Well, now, what had happened there between 19 and 20, that shattered up the lantern?

A. Well, I couldn't see any marks at all between 19 and 20.

143 Q. Do you know that that was his lantern that you found?

A. Well, yes, I knew the lantern by its having a little stiff bail—switchmens lantern—and it had been broken—the bail had been broken and he had wired the bail up, and I knew that was the lantern by those marks.

Q. What did you do with the lantern?

A. I left it laying there between 19 and 20. His lamp was batt-red up and mashed up and it wasn't any good.

Q. You left it right whe-e you found it?

A. Yes sir.

Q. You didn't pick it up?

A. I picked it up and looked at it and saw it was broken and mashed and left it down there.

Q. Was it between the tracks, or between the rails, or where was it?

A. Laying between 19 and 20.

Q. Between the two tracks 19 and 20?

A. Yes sir.

Q. In other words it was between the outside rails of those two tracks?

A. Yes sir.

Q. And where this car was that you are talking about, that was over on track 21?

A. Right across on 21.

Q. And this box car was the last box car in the cut of cars on 21 you say?

A. It was the last box car in 21, yes sir.

Q. How many box cars were in the cut besides this one?

A. Well, I don't know.

Q. You didn't notice about that?

A. No sir; I don't know how many more box cars were in there.

Q. You say the hand hold which showed that it had pulled out was

the the roof grab iron on the east side at the north end of that car?

144 A. Yes sir.

Q. And the car was I. C. number 131704?

A. Yes sir.

Q. Now which end of the iron pulled off, the one nearest to the east end of the car, or the one farthest to the end of the car?

A. Close to the end of the car,—north end of the grab iron. It was the north end of the car, and the north bolt was pulled out.

Q. Now, was that bolt in the grab iron?

A. Yes sir.

Q. Still in there?

A. Yes sir.

Q. Now, the way those things are fastened is by a bolt that comes through from the under side of the roof and is fastened on the top of the car by a nut screwed down on the bolt.

A. The bolt comes up through a bored hole and the grab iron is placed over that bolt and the nut screwed on that.

Q. Is there anything between the wood and the nut when it is screwed down?

A. Yes sir; the grab iron is between the wood and the nut.

Q. I mean on the top of the car?

A. That's what I am talking about.

Q. The grab iron is on top of the roof?

A. Yes sir.

Q. And the bolt comes up from the under side of the roof?

A. Yes sir.

Q. And comes through the grab iron, and the nut is fastened on to that—screwed down on that?

A. Yes sir.

Q. And the bolt was langing in the end of the grab iron?

A. Through the hole in the grab iron, and the nut was on the bolt.

Q. So, one end of the grab iron was laying on top of the roof with the bolt in it when you got there?

145 A. No, the south end of the grab iron was still bolted to the roof and the north end was swinging out, out over the north end of the car.

Q. Now, what time of night was it when you examined that car Mr. Earle?

A. Well, I think it was something about eleven o'clock, or maybe a little later.

Q. About eleven o'clock Saturday night, the 15th of March 1913? The same night Mr. Williams got hurt?

A. Yes sir.

Q. Was there any body there besides you when you made that examination?

A. No, I just walked up through there myself, had my lantern and lunch basket with me, and I walked through there to see if I could find his lantern and I found his lantern laying where it was, no good, and I found one of his cloth gloves laying down

there by the side of the car. I picked it up and put — in my pocket and carried it on home with me.

Q. Did you examine it to see whether it was seal-d or not?

A. No sir.

Q. Now, how far was that car setting from the South end of track 21?

A. Somewhere about three or four car lengths. There were three or four coal cars—I don't know whether they were empty or loaded—I saw them passing by and they were coal cars there, three or four setting south of this car.

Q. Now, they went to the extreeme south end of the track did they?

146 A. As near as they could go.

Q. Without going out of the lead?

A. Out, outside of twenty.

Q. Well now, the south end of track 21 extends down below track 21 some fourteen car lengths?

A. No, the south end of 21 lacks some fourteen car lengths going down as far as track 20.

Q. So then, the cars that were south of the car that this grab iron was loose on went down just as far as they could go without going in on track 20.

A. Just about good clearing distance.

Q. And back of these cars about three car lengths was this other car you speak of?

— Yes sir.

Q. Now, when did you next see Mr. Williams after you left him at the hospital that night.

A. Well, I wouldn't say the exact night, but it — some three or four nights after that.

Q. Three or four nights after that?

A. Yes sir.

Q. You had no sort of communication with him until three or four nights after that?

A. No sir; I got in early three or four nights afetr that—I got in early and went there.

Q. How long did you stay with him in his room after they put him in his room at the hospital that night that he got hurt?

A. Oh, I must have been there twenty or twenty five minutes, after they put him in his room.

Q. After they put him in his room you stayed there twenty or twenty five minutes, and you got a street car and went back to town, and went down and made this examination?

A. Got off the street car at Iowa Avenue, and walked on down through the yards and saw the car.

147 Q. Ddi you ever make any report of what you discovered that night to the railroad company?

A. No sir, nothing more than just the next morning sitting around and a bunch of talking before time to go to work—we were sitting around in the office there, and the subject came up about Williams being hurt, and I told them yes, his lantern was lying down there now.

Q. So, the only report you made, Mr. Earle, about what you discovered there to anybody connected with the Railroad Company was to Mr. Williams?

A. Yes, I didn't say anything to Mr. Williams about that until three or four nights after that.

Q. You went up there and gave him the number of the car and told him what you found to be the condition of the grab iron?

A. Yes, I don't know whether I gave him the number of the car or not, I went out to see him and to see how he was getting along.

Q. He asked you to get the number of the car for him, didn't he?

A. No, he didn't ask me to take the number of the car.

Q. He just asked you to look about the grab iron, and see if there was a loose grab iron on the car?

A. He asked me—he said—if his lantern was any account to get it, and look at the car.

Q. Had you been working about these yards in the day or night any time shortly before this happened, Mr. Earle?

A. Not anything in the neighborhood of this track, no sir.

Q. Track 21?

A. No sir.

Q. You don't know how long the car had been there?

A. No sir.

Q. You don't know how long it remained there after the accident?

148 A. I do not.

Q. Did you make any examination of any other cars on any other tracks, except the one on track 21?

A. I did not.

Q. And all you know about the condition of the car you have already stated, and your reason for finding out the condition of the car you have already stated?

A. Yes.

Redirect examination by Mr. V. Watkins:

Q. Mr. Earle, you told me in your direct testimony that you found some shattered glass near this I. C. car that had the grab iron pulled out; please tell the court where this shattered glass was?

A. Some of it was down between 20 and 21 on the ground, down all around where I taken it to be somebody had fell there, where the cinders were knocked up, and probably some of it was there between 19 and 20, but the lantern was laying between 19 and 20.

Q. Now, what kind of car was there between this I. C. car and the space between tracks 19 and 20?

A. There was four or five car loads of logs settings right along there, and one car load of logs right opposite where the grab iron pulled loose.

Q. I will ask you to stated to the court if you noticed any of this shattered glass on this car load of logs?

A. Well, no, I didn't on the logs, because I didn't get up on the logs at all. After I had done found this hand-hold loose, I crossed

over between the draw-gaurds and found his lamp laying there, and it was mashed up and I didn't think it was worth while varrying home.

Q. Mr. Earle, you told Mr. May you found one of Mr. William's gloves; I will ask you to tell the court where you found that glove?

A. Laying on the ground at the—right down at the ground at the bottom of this ladder where the grab iron pulled off at the 149 top.

Q. Between what track?

A. Between 20 and 21.

Q. And what did you say the condition of the ground was just under that ladder?

A. Well, it was cinders, and it looked like someone had fell there on the ground, and the cinders were ruffled up.

(Witness excused.)

I, R. S. Streit, stenographer, do hereby certify that the foregoing pages numbered 1 to 35, both inclusive, contain a full and correct transcript of the testimony of C. T. Earle, a witness for the plaintiff in the case named in the caption hereof, taken in the law office of Watkins and Watkins, in the City of Jackson, Mississippi, on the 20th day of October, 1914.

This the 21st day of October, 1914.

R. S. STREIT,
Stenographer.

Filed February 20th, 1915. E. D. Fondren, Clerk, J. P. Cadwalader, D C.

150 In the Circuit Court in and for the First District of Hinds County, Mississippi.

No. —.

GEORGE R. WILLIAMS, Plaintiff,

VS.

ILLINOIS CENTRAL RAILROAD COMPANY et al., Defendants.

Agreement to Take Depositions.

It is agreed that the depositions of A. J. Williams, Laura E. Williams, Mark K. Williams and W. E. Williams, may be taken on the part of the plaintiff before any disinterested notary public in Holt County, Nebraska, upon the annexed interrogatories and cross-interrogatories; that the issuance of a commission be and is hereby waived, as well as the taking of said testimony, that the said notray public may either write out the answers of said witnesses to the said interrogatories and ~~cross~~-interrogatories or cause the same to be taken down in short hand by a stenographer and typewritten; that said testimony, when completed, shall be sent by the said notary public,

either by United States mail or express, to E. D. Fondren, Clerk of the Circuit Court at Jackson, Hinds County, Mississippi; that all proper objections to said testimony, to any part thereof, on account of irrelevancy, immateriality or incompetent- be and the same is hereby *reversed*.

Signed, the 3rd day of September, 1914.

WATKINS AND WATKINS,

Attorneys for Plaintiff.

WELLS, MAY AND SANDERS,

Attorneys for Defendant.

151 STATE OF NEBRASKA,
County of Holt:

Be it remembered that on the 29th day of September, A. D. 1914, by virtue of and in pursuance of the attached agreement to take depositions signed by the parties, to take the depositions of A. J. Williams, Laura E. Williams, Mark K. Williams and W. E. Williams of Atkinson, Nebraska, witnesses for the complainant in certain action pending in the Circuit Court in — for the First District of Hinds County, Mississippi, wherein George R. Williams is plaintiff and Illinois Central Railroad Company et al. are defendants, on the interrogatories and cross-interrogatories annexed and accompanying said agreement. I caused the said A. J. Williams, Laura E. Williams, Mary K. Williams and W. E. Williams, all being persons of sound mind and upwards of twenty-one years of age, to come before me at my office in the City of O'Neill and State of Nebraska, on the 29th day of September, 1914, and there and then took said depositions as follows:

152 A. J. WILLIAMS being by me first duly cautioned and sworn to speak the truth, the whole truth and nothing but the truth, in answer to said interrogatories and cross-interrogatories.

Q. Please state your name, place of residence and occupation?

A. A. J. Williams, my full name is August J. Williams, age 62, Atkinson, Holt County, Nebraska, occupation farming.

Q. Please state whether or not you are related to George R. Williams, the plaintiff in this case, and if so, state your relationship?

A. Yes sir, I am his father.

Q. In this case, George R. Williams sues the Illinois Central Railroad Company and the Yazoo and Mississippi Valley Railroad Company for injuries alleged to have been sustained by him by reason of the negligence of said companies on the 15th day of March, 1913. Please state whether or not you were acquainted with the said George R. Williams prior to said date and if so, state when was the last time you saw him prior to the injury complained of in this suit, and state, if you know, the condition of his health and his general physical condition. Please answer in detail.

A. I have known George R. Williams since he was born, he is my son. I saw him sometime in October, 1911, saw him at our home in Atkinson, Holt County, Nebraska. He ate and slept at home, and he ate and slept well, he walked about and was strong

and healthy and was not sick, and was just like he had always had been.

Q. Please state when you saw him after the 15th day of March, 1913; state the circumstances fully, and state his physical condition then, and state his physical condition during all the time since said time, stating in detail.

153 A. I saw him for the first time after March 15th, 1913, about the 3rd day of May, 1913, on the farm where we were living six miles south of Atkinson. We have moved since that time; he has been on that farm and the farm we are now living on ever since except when he was away to Omaha for medical attention. When he came home on May 3, 1913, he walked lame and had a cane, he looked pale and was thin. I saw him often put his hand to his back and heard him moan. I know that he had very little appetite and he was awake much of the nights. The first three nights he was at home, my son W. E. Williams and I sat up with him all night. He moaned and groaned all night during these nights and slept hardly any at all. He has done no work since that time. He would try a few times to do a few chores, such as carry water, feeding the horses or riding to town on errands, but when ever he did that, he seemed to be weak and pale and went to bed. He has done no work at any time since he came home May 3rd, 1913. He has been moaning and groaning much of the time and does not sleep much at night and is lame — the time. I have slept in the room with him all the time and I know of my own knowledge he was awake a lot every night and has been since he came home. He walks lame all the time and uses a cane.

Q. Please state the difference if any there is in his physical condition since the 15th day of March, 1913, when the alleged injury of which he complains is said suit, is said to have happened?

A. Before March 15th, 1913, he was never lame, he walked well, ran well and was an active young man and was always in good health; always slept and ate well and I never saw him nervous. But since that time he can't sleep, he does not eat well, he is lame, walks with a cane all the time, he is awake much every night, his muscles twitch and he is nervous. Before March 15, 1913, when he

154 was at home I have seen him work at the printing office in Atkinson and I have frequently saw him lift up and set up the forms himself, some of these forms would weigh about twenty-five pounds, being seven column forms, and he lifted them quickly and set them in place.

Q. Please state what was the business and occupation of said plaintiff prior to said date, and what has been his occupation and business since that date?

A. The last time I saw him at work before March 15th, 1913, he was working in the printing business at Atkinson. After that he went to railroading, but I did not personally see him at the railroad work. Since March 15, 1913, he has been doing nothing. He has had no occupation or business of any kind. I know that personally since May 3rd, 1913. Before that he was not at home, and all I would know about his condition then was from letters.

Q. Please state what, if you know, *what* was the earning capacity of the said George Williams prior to the 15th day of March, 1913,

and what has been his earning capacity since that date, and if there is any difference, please state what?

A. Since March 15th, 1913, he has earned nothing. Since he has been at home May 3rd, 1913, I know personally he has earned nothing and has not done any work and has been sick and lame and not able to work. When he was working in the printing office in Atkinson, he earned about one hundred and fifty dollars per month.

Q. State anything else you may know material to this controversy?

A. My son was in the printing business at Magnet, Nebraska, at one time and lived at home. I saw him daily, and he was earning there about one hundred dollars a month. After that he was a brakeman on the Chicago, St. Paul, Minneapolis and Omaha Railway. He was always active, healthy and strong and was never sick that I know of.

155 Cross-interrogatories:

Q. Where were you on the 15th of March, 1913?

A. Well, let me see, in Sheridan precinct, Holt County, Nebraska.

Q. State whether you know, of your own personal knowledge, where Geo. R. Williams was on the 15th day of March, 1913?

A. I do not know of my own knowledge, but we received letters from him about that time that were post-marked at Memphis, Tenn., and we received those letters *threw* the United States mail at the postoffice in Atkinson, Neb.

Q. When was the last time prior to March 15, 1913, that you saw Geo. R. Williams, where did you see him and what was he doing at that time?

A. At our home in Atkinson, Nebraska, in October, 1911. At that time he was just home on a visit.

Q. State whether or not Geo. R. Williams has ever instituted any other suit against the Illinois Central Railroad Company or the Yazoo and Mississippi Valley Railroad Company, for his alleged injuries, and if so, how many suits has he instituted, where were they instituted, and what was the result of said suits?

A. I know nothing of any other suit. I know he has been at home all the time except when he has been away to be treated by a doctor. At one time he went up to Minneapolis as a witness for some young man in a case, and I know he got no money out of any law suit, because he has been at home where we would have known it if he had.

Q. Where has the said Geo. R. Williams been, since the 15th of March, 1913, up to this time. State fully and in detail. If *any* answer to direct-interrogatory No. 7 you undertake to state the earning capacity of Geo. R. Williams, prior to the 15th of March, 1913, state fully the source and character of your knowledge on the subject and how it was obtained, and whether or not you have answered said direct-interrogatory on information and hearsay

156 or is your answer based on personal knowledge, and state fully the source of your knowledge, if you have any.

A. He came home May 3rd, 1913, before that he had been at Memphis, after his injury about the 15th of March, 1913. As to

his earning capacity will say, we were living in Atkinson when he was working in the Graphic, and I was in the office with him about all the time and saw the money received, and I know that he made about \$150 a month. I also know that when he was at Magnet, he received about \$100 a month out of running the newspaper, and I was in the office much of the time and saw him receive the money, and he lived at home while working on this paper and I know he got the money. What money he earned while railroading I know nothing about personally, and all I know about it is what he has told me.

Q. If you undertake to state what difference there is in his earning capacity since March 15th, 1913, and prior to that date, state fully upon what knowledge or information you based your answer, and how you arrived at the difference in his earning capacity?

A. I have already stated all I know about his earnings while in the newspaper work. I do not know personally what he earned as a railroad employe; but I know personally that he has earned no money whatever since he came home May 3rd, 1913, and has done no work, and has been sick and lame all the time.

A. J. WILLIAMS.

Sworn and subscribed to before me at O'Neill, Nebraska, this the 29th day of September, A. D. 1914.

[SEAL.]

C. B. SCOTT,
Notary Public.

157 MRS. LAURA E. WILLIAMS, being by me first duly cautioned and sworn to speak the truth and nothing but the truth, in answer to said interrogatories and cross-interrogatories, did depose and say:

Q. Please state your name, age, place of residence and occupation?

A. Laura E. Williams, age 53, I reside on a farm in Sheridan Township, Holt County, Nebraska, and am the wife of A. J. Williams.

Q. Please state whether you are related to George R. Williams, the plaintiff in this case and if so state your relationship?

A. I am the mother of George R. Williams, the plaintiff in this lawsuit.

Q. In this case George R. Williams sued the Illinois Central Railroad Company and the Yazoo and Mississippi Valley Railroad Company for injuries alleged to have been sustained by him by reason of the negligence of said companies on the 15th of March, 1913. Please state whether or not you were acquainted with the said George R. Williams prior to said date, and if so, state when was the last time you saw him prior to the injury complained of in this suit, and state, if you know, the condition of his health and his general physical condition. Please answer in detail.

A. I am the mother of George R. Williams and have known him since he was born, and he was born the 9th day of October, 1883, in Douglas County, Nebraska, which is the county where the City of Omaha is situated. I have known the condition of his health all

his life. He has always been active, walked well, could run fast, sleep sound, ate well, and was always healthy and strong. He never had a sick spell that I can recall.

Q. Please state when you saw him after the 15th day of March, 1913; state the circumstances fully, and state his physical condition then and state his physical condition during all the time since the said time, stating in detail.

A. The first time I saw my son George R. Williams after the 15th of March, 1913, was on the 3rd day of May, 1913, at our home. He came there and was very thin and was lame. I know that my husband and son W. E. Williams sat up with him for three nights after he came home. He was moaning much of the time and slept very little, and he has been living at home with us ever since, and he is awake much of the time at night and is nervous and -ll the time lame and sick.

Q. Please state the difference if any there is in his physical condition since the 15th day of March, 1913, when the alleged injury

A. Whenever I saw my son George before the 15th of March, 1913, he was active, strong and healthy, and always ate well and slept well; but since he came home on the 3rd day of May, 1913, he has been lame, does not sleep well, moans and complains. I have often seen him put his hand on his back and heard him moan, and ever since he has been at home I have often rubbed his back with alcohol. I have done that many nights when he would be moaning and groaning and awake, and I have rubbed his back for a long time with alcohol very often at night to get him to sleep.

Q. Please state what was the business and occupation of said plaintiff prior to said date, and what has been his occupation and business since that date?

A. My son George, before March 15th, 1913, was working in the railroad business at Memphis, Tenn., for a while and had done other railroad work, and also worked on a newspaper at Atkinson, Nebraska, and at Magnet, Nebraska. Since he came home in May 1913, he don't do any work of any kind and has no business.

Q. Please state what, if you know, was the earning capacity of said plaintiff prior to March 5th, 1913, and what has been his earning capacity since said date, and if there is any difference, please state what.

A. After we moved to Atkinson, he worked on and run the Atkinson Graphic newspaper for a time, and earned about \$150 a month. I know he brought money home and it was used in the home. Since he came home the 3rd day of May 1913, he has not earned any money at all.

Q. State anything else you know material to this controversy?

A. I know that my son has not done any work since he came home May 3rd, 1913, and has been sick, and lame and carries a cane all the time. He has been doctoring a lot of the time. He has tried to do some chores about the place but would get tired and sit down or go to bed. I know one time Clayton Perry and Harry Miller came to the house, they were going hunting; when they got there George was in bed but he got up and went out and sat on the

porch, they asked him to go with them and he went in a buggy with them and was gone about three hours, and as soon as he came back he looked pale and went right to bed; he got back at 6 o'clock in the evening and he did not get up again that night, and did not get up until late the next day, and he was awake about all night and was moarning and groaning.

Cross-interrogatories:

Q. Where were you on the 15th of March 1913?

A. I was at my home on the farm in Sheridan Township, Holt County, Nebraska.

Q. State whether you know, of your own personal knowledge where George R. Williams was on the 15th of March 1913?

A. I do not know personally where my son George was on the 15th day of March, 1913; I know we were getting letters from him at that time from Memphis, Tenn.

Q. When was the last time prior to March 15th, 1913, that you saw George R. Williams, where did you see him and what was he doing at that time?

160 A. In Atkinson, in October 1911. He came home on a visit.

Q. State whether or not George R. Williams has ever instituted any other suit against the Illinois Central Railroad Company or the Yazoo and Mississippi Valley Railroad Company, for his alleged injuries, and if so, how many suits has he instituted, where were they instituted, and what was the result of said suit?

A. I don't know anything about any law suit. I know he never has got any money out of any law suit.

Q. Where has the said George R. Williams been since the 15th of March, 1913, up to this time? State fully and in detail? If in answer to direct interrogatory No. — You undertake to state the earning capacity of George R. Williams, prior to the 15th of March 1913, state fully the source and character of your knowledge on the subject and how it was obtained, and whether or not you have answered said direct interrogatory on information and hearsay, or your answer is based on personal knowledge, and state fully the source of that knowledge, if you have any?

A. I only know from correspondence that he was in Memphis Tennessee, on the 15th of March, 1913, and was there after that for a good while. He got to our home May 3rd, 1913, and I saw him there. I know that he had earned about \$150 a month at Atkinson, because I know that he brought the most of the money home and used a lot of it in the family and bought cloth-s for himself. I know also that he was earning about \$100 *dollars* at Magnet, for he was living at home at that time and I would see part of the money at least. I don't know what money he earned whiel working on the railroad except as he told me.

Q. If you undertake to state what difference there is in his earning capacity since March 15th, 1913, and prior to that date, state fully upon what knowledge or information you based your answer, and how you arrived at the difference in his earning capacity?

A. I have stated all I know about his earning capacity before March 15th, 1913, I know personally that since he came home May 3rd, 1913, he has not earned any money. He has not done any work, he has been sick, sleepless and lame and walks with a cane and has been unable to work.

LAURA E. WILLIAMS.

Sworn and subscribed before me at O'Neill, Nebraska, this 29th day of September A. D., 1914.

C. B. SCOTT,
Notary Public.

162 W. E. WILLIAMS, being by me first duly cautioned and sworn to speak the truth, the whole truth, and nothing but the truth, in answer to said interrogatories and cross-interrogatories, did depose and say:

Q. Please state your name, age, place of residence and occupation?

A. W. E. Williams, age 29, occupation farmer, residence Shuridan Township, Holt County, Nebraska.

Q. Please state whether or not you are related to Geo. R. Williams, the plaintiff in this case, and if so, state your relationship?

A. Yes sir, I am a brother of George R. Williams.

Q. In this case George R. Williams sues the Illinois Central and Yazoo and Mississippi Valley Railroad Company for injuries alleges to have been sustained by him by reason of the negligence of said companies on the 15th day of March, 1913.

— Please state whether or not you were acquainted with the said George R. Williams prior to said date, and if so, state when was the last time you saw him prior to the injury complained of in this suit, and state, if you know, the condition of his health and his general physical condition. Please answer in detail?

A. I am well acquainted with my brother and have been since he was born, he is only twenty-five years old. The last time I saw him before March 15th, 1913, was in October 1911. He had been living at home the greater part of his life and we were boys together. We slept together and ate together. He ate well, slept well and was never sick, was healthy, active and never lame.

Q. Please state when you saw him after the 15th day of March 1913, state the circumstances fully, and state his physical condition then, and state his physical condition during all the time since said time, stating in detail?

163 A. The first time I saw him after March 15, 1913, was on the 3rd day of May, 1913, at the farm near Atkinson. He came there and had a cane. He rode in a wagon, when he got there I looked at him and saw he was pale and kind of dropped over. He asked me to help him out of the wagon I picked him up and carried him into the house and sat him in a chair. He looked pale and weak and he moaned and complained of his back and kept putting his hand to his back. My father and I sat up with him for three nights after that and he scarcely slept at all and moaned nearly all the time. Ever since that I have been at home and so has he, except

when he was away to the doctor's, and one time for a few days up at Minneapolis, and I know that he had been sleepless most of the time and moaning and complaining. He uses a cane when walking and is lame and wears a brace all the time on his back. He has done no work of any kind. I have seen him try to do chores, such as carry in a pail of water, feeding the horses, and he was forced to go in the house and lie down. It is a very few times he has attempted to do that much.

Q. Please state the difference, in any there is in his physical condition since the 15th day of March, 1913, when the alleged injury of which he complains in said suit, is said to have happened?

A. All during his life, before March 15th, 1913, whenever I saw him, he walked well and was not lame, had a good color, slept well, ate well and was active and strong. I have played base ball with him; he could bat well, he could throw a ball well and run well. He was a good ball pitcher. I have played foot ball with him and he could kick well and run well and was very active. I have traveled on local freight trains that he was working on, and have seen him handle freight and lift boxes weighing up to at least 150 pounds and handle them rapidly. He was quick active, and strong. But

164 since he had been at home, May 3rd, 1913, he is lame, walks with a cane and walks slowly, moans much of the time, keeps putting his hand on his back and complaining. He does no work. He is not strong enough to do work. I never saw him run or try to run since he came home. I remember one time that he went hunting with Harry Miller and Clayton Perry—I was not in the house when they went but was working in the field and saw them at a distance. George was gone about three hours and he came back about six o'clock and went to bed and did not get up until the afternoon of the next day, and he moaned and groaned and kept putting his hand on his back and complained nearly all night. I have travelled with him in a buggy since he came home this last time, and we always put on extra cushions in the buggy and drive slow when going over rough places, and when we are crossing any rough places he will put his hand to his back and at times moan.

Q. Please state what was the business and occupation of said plaintiff prior to said date, and what has been his occupation and business since said date?

A. The last work my brother did before he went away from home in 1911, was working on the Graphic. I know he had been rail-roading before that time, because, I had seen him working as a brakeman myself. He had no occupation or business since he came home May 3rd, 1913. He has been sick all the time and lame, and not able to work.

Q. Please state what, if you know, was the earning capacity of the said George R. Williams prior to the 15th day of March, 1913, and what has been his earning capacity since said date, and if there is any difference, please state what?

A. I do not know personally what he earned at any work he did

prior to March 15th, 1913. All I know is just what he told me. He has earned nothing since May 3rd, 1913.

Q. State whatever else you may know material to this controversy?

165 A. I know he always had a good appetite; I know that he played base ball well; he was active, quick and could run bases well; and foot ball, he was one of the fastest boys on the team and kicked well. He played quarter-back on the team.

Cross-interrogatories:

Q. Where were you on the 15th of March, 1913?

A. I was at home on the 15th of March, 1913, near Atkinson Nebraska.

Q. State whether you know of your own personal knowledge, where George R. Williams was on the 15th of March, 1913?

A. I don't know where my brother was on the 15th of March, 1913, but he has been writing to me right along and had been writing me a short time before that from Memphis, Tennessee.

Q. When was the last time prior to March 15, 1913, that you saw George R. Williams, where did you see him and what was he doing at that time?

A. The last time I saw my brother before March 15th, 1913, was the month of October 1911, but I can't give the exact date. At that time he had just been home on a visit, he had been away working for a while, after he quit work on the Graphic.

Q. State whether or not George R. Williams has ever instituted any other suit against the Illinois Central Railroad Company or the Yazoo and Mississippi Valley Railroad Company, for his alleged injuries, and if so, how many suits has he instituted, and what was the results of said suits?

A. I don't know of his suing any railroad or bringing any suit, except the suit that is going on down at Jackson, Mississippi, against the Illinois Central Railroad and the Yazoo and Mississippi Valley Railroad. I do know that he has not got any money from any railroad in any case.

166 Q. Where has the said George R. Williams been since the 15th of March, 1913, up to this time. State fully and in detail. If in answer to direct-interrogatory No.— you undertake to state the earning capacity of Geo. R. Williams, prior to the 15th of March, 1913, state fully the force and character of your knowledge on the subject and how it was obtained, and whether or not you have answered said direct-interrogatory on information and hearsay, or your answer is based on personal knowledge, and state fully the source of that knowledge, if you have any?

A. I only know by correspondence and hearsay where my brother was from the 15th of March, 1913, up to the 3rd day of May 1913, I know he came home that day, and has been at home ever since only when he has been away under a doctor's care, and once up to Minneapolis. I do not know what his earning capacity was except that he told me. I do know that he has not earned any money

since May 3rd, 1913, and he hasn't done any work, and has been sick and lame and has not been able to work.

Q. If you undertake to state what difference there is in his earning capacity since March 15, 1913, and prior to that date, state fully upon what knowledge or information you based your answer, and how you arrived at the difference in his earning capacity?

A. I do not know what he earned before March 15th, 1913, except what he told me. I know that since he came home, May 3rd, 1913, he has earned nothing at all.

W. E. WILLIAMS.

Sworn and subscribed to before me at O'Neill, Nebraska, this the 29th day of September, A. D., 1914.

[SEAL.]

C. B. SCOTT,
Notary Public.

167 MARY K. WILLIAMS, being by me first duly cautioned and sworn to speak the truth, the whole truth and nothing but the truth, in answer to said interrogatories and cross-interrogatories did depose and say:

Q. Please state your name, age, place of residence and occupation?

A. Mary K. Williams, 22 years old, my home is on a farm south of Atkinson, Holt County, Nebraska, my occupation is a school teacher and am teaching the public schools in the village of Emmett, Holt County, Nebraska, at the present time.

Q. Please state whether or not you are related to Geo. R. Williams, the plaintiff in this case, and if so, state your relationship?

A. Yes sir, I am a sister of Geo. R. Williams.

Q. In this case Geo. R. Williams sues the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company for injuries alleged to have been sustained by him by reason of the negligence of said Companies on the 15th of March, 1913. Please state whether or not you were acquainted with the said Geo. R. Williams prior to said date, and if so state when was the last time you saw him prior to the injury complained of in this suit, and state if you know, the condition of his health and his general physical condition. Please answer in detail?

A. I was acquainted with my brother and have been as long as I can remember. The last time I saw him before March 15th, 1913, was in October, 1911. At that time he was visiting at home; he sleep well, eat well, and walked al- right and was not lame; he was strong and active. He was never sick that I know of. I worked with my brother in the printing office at Atkinson and at Magnet, and he set type and handled forms weighing as much as 75 pounds, and pulled the Washington Printing Press, and moved fast and did the regular work in the printing office. I know this because I saw him do it.

168 Q. Please state whether you saw him after the 15th day of March, 1913; state the circumstances fully, and state his

physical condition then, and state his physical condition during all the time since said time, stating in detail?

A. The first time I saw my brother George after the 15th of March, 1913, was on the 3d day of May, 1913, at our home in Sheridan Township south of Atkinson, Nebraska. He looked thin and had a whitish color, and he was complaining of his back. I know that for several nights father and brother sat up with him, and that ever since that time, when I have been at home, he has been awake much at night, and I have heard him *mourn* at night very often. He has been lame all the time and he is nervous and eats but little, and he has not done any work of any kind. I have seen him go and get a *pale* of water and when he came in he would go and lie down on the bed.

Q. Please state the difference, if any there is in his physical condition since the 15th day of March 1913 when the alleged injury of which he complains in said suit, is said to have happened.

A. All that I can say is, that during his whole life as long as I have known him until he went south in October, 1911, he was healthy, strong, could do any kind of work that he went at; walked well and was never sick or lame. Since he came home, May 3d, 1913, he has twitching of the muscles, does not sleep well at nights, *mourns* and groans and hold- his hand on his back and wears a brace on his back, and is constantly complaining, and I know he walks lame and uses a cane, and has done no work of any kind since he came home in May, 1913.

Q. Please state what was the business and occupation of said plaintiff prior to said date, and what has been his occupation and business since that date.

A. Before he left home the last time he was working on the Atkinson Graphic. After that he went to railroading as he wrote us. I didn't know personally what he was doing, except 169 that, I was down once to Sioux City, and I know he went out at night in his working clothes and said he was going on his run on the railroad, and I know that while at Sioux City I went down with him one time to the office of the Chicago, St. Paul, Minneapolis & Omaha Railroad and he got a check for wages from the Company.

Q. Please state, what, if you know, was the earning capacity of the said George R. Williams prior to the 15th day of March 1913, and what has been his earning capacity since that date, and if there is any difference, please state what?

A. When I worked for him when he owned the Graphic, he earned about \$150.00 a month. That was at Atkinson, Nebraska, in 1911. I worked with him during the four months he was there, and saw him take in the money and know of my own knowledge. Since he came home May 3d, 1913, he has not done any work and has not earned anything.

Q. State anything else you may know material to this controversy?

A. I was teaching in the country school district at our home when he came home May 3d, 1913, but I was at home every night, and I remained at home until September, 1913, and I know he was

awake at night very much and *mourned* and groaned. I know he was lame all the time and used a cane. After that I went away to teach school in Wayne County, Nebraska, and did not return until May, 1914, but was at home all the time then until September 1914, when I went to teaching school at Emmett, and while I was at home in 1914, I know he has been lame all the time, he has been wearing a brace and often puts his hand to his back and *mourns*; I know that he often lies down on the bed in the day time and *mourns*.

Cross-interrogatories:

Q. Where were you on the 15th day of March 1913?

A. I was teaching school that day in our home district and spent that night at home.

170 Q. State whether you know of your own personal knowledge, where Geo. R. Williams was on the 15th day of March, 1913?

A. I don't know personally where my brother, Geo. R. Williams was on the 15th day of March, 1913, but a short time before that I got a letter from him which was mailed at Memphis, Tenn.

Q. When was the last time prior to March 15th, 1913, that you saw Geo. R. Williams, where did you see him and what was he doing at that time?

A. The last time I saw my brother before that time was in October 1911. He came home on a visit at that time; he had been working in the South on the railroad.

Q. State whether or not Geo. R. Williams has ever instituted any other suit against the Illinois Central Railroad Company, or the Yazoo & Mississippi Valley Railroad Company, for his alleged injuries, and if so, how many suits has he instituted, where were they instituted, and what was the result of said suits?

A. I don't know of any suits he has brought against any railroad company. I do know he has gotten no money from any railroad company.

Q. Where has the said Geo. R. Williams been since the 15th day of March, 1913, up to this time. State fully and in detail. If in answer to direct interrogatory #7 you undertake to state the earning capacity of Geo. R. Williams, prior to the 15th of March 1913, state fully the source and character of your knowledge on the subject and how it was obtained, and whether or not you have answered said direct interrogatory on information and hearsay, or on your answer is based on personal knowledge, and state fully the source of that knowledge, if you have any.

A. My brother George did not come home from Memphis until the 3d of May, 1913, he has been at home ever since that
171 time except when he has been away doctoring, and I believe once he went up to Minneapolis as a witness for some young man. I know that he has been at home from seeing him there when I have been home. Of course, I have been away teaching some of the time, just as I have stated. His earning capacity at Atkinson I know from my own personal knowledge. I was there and saw

him get the money. I also knew from seeing him receive the money and being in the office, that he got about \$100.00 a month at Magnet, Nebraska. I do not know his earning capacity on the railroad except what he told me. I do know he has not done any work or earned any money since he came home- May 3d, 1913.

Q. If you undertake to state what difference there is in his earning capacity since March 15th, 1913, and prior to that date, state fully upon what knowledge or information you based your answer, and how you arrived at the difference in his earning capacity?

A. I do not believe I could state anything further. I personally know him — receive the money for the printing work at Atkinson and at Magnet and I do know that he has not earned any money since he came home on May 3d, 1913.

MARY K. WILLIAMS.

Sworn and subscribed to before me at O'Neill, Nebraska, this 29th day of September, A. D. 1914.

[SEAL.]

C. B. SCOTT,
Notary Public.

172 THE STATE OF NEBRASKA,
County of Holt, ss:

I, C. B. Scott, a Notary Public, duly qualified and acting in and for the County of Holt and State of Nebraska, do hereby certify that I caused to come before me the said A. J. Williams (whose fully name is Augustus J. Williams) Laura E. Williams, W. E. Williams, and Mary K. Williams, at my office in the City of O'Neill, in the County of Holt and State of Nebraska, and they being by me severally cautioned, sworn and examined, to speak the truth, the whole truth and nothing but the truth, in answer to said interrogatories and cross-interrogatories, did give the foregoing depositions. That the answers of the said witnesses were by me reduced to writing in the presence of said witnesses, and after carefully read over by said witnesses respectfully and thoroughly understood by said witnesses as their respective depositions in said cause. That they each severally signed the same as their respective depositions in my presence. That the questions propounded to each of said witnesses and to which they had answered, are the direct and cross-interrogatories accompanying said agreement to take depositions. That the depositions of each of said witnesses has in no manner been changed or altered since the same was subscribed by said witnesses, but that the same has remained in my possession up to the time of sealing and delivering the same to the post office at O'Neill, Nebraska, directed to E. D. Fondren, Clerk of the Circuit Court, at Jackson, Hinds County, Mississippi; and I do further certify that I, the undersigned, am a duly commissioned, qualified and acting Notary Public in and for Holt County, Nebraska, and by the laws of said State am authorized to administer oaths. That I am not attorney, or relative of either party or otherwise interested in the event of this suit. That no appearances by counsel or attorneys on either side of the case was made, and no attorneys were

present during the examination and the taking of the 173-176 several depositions.

In witness whereof I have unto set my hand and affixed my Notarial Seal this 29th day of September A. D. 1914.

[SEAL.]

C. B. SCOTT,
*Notary Public within and for
Holt County, State of Nebraska.*

Filed October 2d, 1914. E. D. Fondren, Clerk.

177 Mr. GEO. R. WILLIAMS, the plaintiff recalled for further cross-examination, testified as follows:

By Mr. Wells

Q. Mr. Williams, in your leading examination on yesterday, I understood you to say that the last thing you remembered in connection with your injury and accident at Memphis was, that you climbed up on the car and was holding with your left hand to the ladder, and caught hold of the hand hold with your right hand, when it gave way and you felt that you were falling, that was the last thing you remembered—you lost consciousness right then—is that true?

A. Yes sir.

Q. And you don't remember anything about falling, or when you struck the ground, or anything about it?

A. I just remember the sensation of falling.

Q. You don't remember anything else at all, until you waked up on the operating table?

A. That's right sir.

Q. Can you give me an estimate of the distance from the point at which this car was located to what is known as the car-knockers' shanty, I believe they call it?

A. Why, it would probably be possibly 30 to 40 cars.

Q. 30 to 40 cars?

A. I would say that, yes sir.

Q. What was the length of this track 21?

A. In cars.

Q. Well, feet or cars or yards, any way you want to estimate it, from one end to the other?

178 A. Well, I believe it is about 40 cars.

Q. 40 cars long?

A. Yes sir.

Q. Is the car knockers' shanty at either end?

A. The North end.

Q. Is it right at the end of that track?

A. About the end of it, yes sir.

Q. You alleged in your declaration that the Illinois Central operates a railroad in Nebraska; that is a fact, isn't it—Omaha to Chicago, I believe you said?

A. Yes sir.

Q. Then you instituted suit also in St. Paul, Minnesota on this same cause of action, didn't you?

A. Yes sir.

Q. And neither of those cases terminated, and you brought the suit here?

A. That's right sir.

Q. Now, Mr. Williams, I want to ask you again, if it is not a fact—I didn't understand just what your answer was—if it is not a fact that at the time of your injury on the Rock Island Railroad, when you were making a settlement with that railroad company—if it is not a fact that the chief cause of your complaint then at the time, and up to the very time of the settlement, was the injury to your back that you are claiming now—not in detail, but you were claiming in that injury that you sustained a severe shock
179 to your back, and were you not complaining from severe pains and suffering you had in your back at the time of the settlement with the Rock Island?

A. No sir, I did not.

Q. Who did you make that settlement with for the Rock Island?

A. Mr. Gibson.

Q. You say it is not a fact that you were complaining of this same character of injury from that fall, that you are complaining of now?

A. No sir, that is not a fact.

Q. And was not at the time you made this settlement?

A. No sir.

Q. At what time was the examination made—you spoke of some ex-ray examination that was made at a different time from the time you were examined by Dr. Hall, Dr. Lord and others—at what time was that examination made?

A. Doctor Harris made a number of examinations before and after Dr. Hall examined me.

Q. I am talking about the time when you were examined and an ex-ray photograph was taken, prior to the examination by Dr. Lord and Dr. Summers and Dr. Hall?

A. Dr. Harris made an examination before and after that examination.

Q. When was the first examination that you had at which an ex-ray photograph was taken?

A. About July 1913.

Q. When was the next time, if you remember?

A. Well, he has taken them all the time since then.

180 Q. Did he make this ex-ray examination himself, or have some one else do it?

A. He did it himself—he had a machine right in his office.

Q. You were asked about Dr. Summers; he has no connection with the Illinois Central at Omaha, has he?

A. He has no direct connection with the I. C. that I know of.

Q. He is a very eminent surgeon in that section of the country, isn't he?

A. I couldn't say; I never met him until then.

Q. At any rate, he has no direct connection with the I. C. that you know of, at all—he lives at Omaha?

A. I understand he does—I don't know where he lives.

By Mr. W. H. Watkins:

Q. You were asked in your previous examination about when you were injured on the Rock Island what doctors examined you?

A. Dr. Carl and Dr. Ristine.

Q. Were either of those doctors here at the last term of this Court?

A. Yes sir, both were here—I met them both.

Q. Who brought them here?

A. They told me personally here that the I. C. Railroad brought them.

Q. Did you bring either one of them here?

A. No sir, I did not.

Q. Mr. Wells asked you with reference to the suit which you filed against the I. C. in your home State?

A. Yes sir.

181 Q. And you filed another suit against the I. C. at Minneapolis?

A. Yes sir.

Q. Were you ever able in your own state, or any where, to get jurisdiction of the Y. & M. V. Railroad?

A. No sir.

Q. Have you ever filed suit anywhere else against the Y. & M. V. Railroad, except this suit?

A. No sir.

Q. You say that Dr. Harris took a number of ex-rays?

A. Yes sir.

Q. Do you know whether or not he exhibited any of them to Dr. Duval of Memphis.

A. Yes, sir, he did, in Dr. Harris' room when we were here last Fall. He showed the pictures to Dr. Duval in my presence in Dr. Harris' own room.

Q. Do you know whether or not those were the same ex-rays Dr. Harris had taken of your body?

A. Yes sir.

Q. I will ask you whether or not they were the same?

A. They were the same.

Q. Something has been asked you about Dr. Lord examining you in Omaha—did he examine you?

A. Dr. Lord was present at the examination, yes sir.

Q. Do you know whether he took an ex-ray himself?

A. No sir, he was there.

Q. Did he make any examination of your body at all?

A. I don't think Dr. Lord touched me at all. He was in the room when the other doctors were examining me, but I don't remember him touching me for an examination.

182 Q. Did he say anything about the case?

A. Dr. Lord helped me get my clothes off and get dressed, and stand up, and helped me get on the table, and I don't remember of Dr. Lord saying anything either way.

Q. Did Dr. Summers say anything?

A. When they were examining to see whether I had anesthesia of

the lower limbs, to see if I had any feeling in them, Dr. Summers was making the examination, and he says "That young man certainly hasn't got any feeling in his lower limbs."

Q. Tell the jury what they had done to you?

A. They took needles and pins and jabbed me all the way from my hips down.

Q. How deep?

A. So the blood would come in two or three places.

Q. To what extent did you feel it?

A. I didn't feel it at all.

Q. What did Dr. Summers say about that?

A. He said I certainly didn't have any feeling from my hips down—just like a dead man. Dr. Hall stood on my toes two or three times, and apologized—he is a big heavy man—but it didn't hurt me.

Q. Could you feel him standing on your toes?

A. No sir I couldn't feel him at all.

Q. What is your present weight?

A. I don't know what it is.

Q. What was your weight the last time you weighed?

A. I weighed 136 pounds without any clothes on when Dr. Hall examined me.

183 Q. What was your prior weight before?

A. I always weighed right close to 155 pounds. If the Court please, I would like to make a little explanation on this—when I was injured at Cedar Rapids, Mr. Wells asked me wasn't I claiming the same injury then as I am now. I would like to say that Mr. Rineheart, in the same ward I was in, had his hip and arm broken—he was unable to move at all; he couldn't raise himself, and the girls were not strong enough to lift him in and out of the chair, and I would lift him from the bed to the chair and put him from the chair to the bed, and I also shaved him and took care of him and waited on him and helped the girls around the ward, and Mr. Rineheart was a man that weighed at least 160 pounds, and I lifted him without any trouble at all.

Q. Was there anything the matter with your back then?

A. No sir.

Q. Did you ever employ a lawyer at all in that case against the Rock Island for your injury?

A. No sir.

Q. The claim agent came to you voluntarily?

A. Yes sir.

By Mr. Wells:

Q. The Yazoo & Mississippi Valley Railroad runs in the State of Tennessee, doesn't it, and in Memphis, right where this injury occurred?

A. Yes sir.

(Witness excused.)

- 184 Dr. C. E. DUVAL, a witness called on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Harrington:

Q. What is your name?

A. Dr. C. E. Duval.

Q. And your age?

A. 37.

Q. Your place of residence?

A. Memphis, Tenn.

Q. Your business or profession?

A. Physician.

Q. Are you a graduate of any regular medical college?

A. Yes sir.

Q. What college?

A. Barnes University, St. Louis.

Q. What year did you graduate there?

A. 1908.

Q. How long have you practiced medicine in Memphis, Tenn.?

A. 6 years.

Q. Do you also do some surgical work?

A. Yes sir.

Q. Are you somewhat familiar with the use of the ex-ray machine, Doctor?

A. Not in the manipulation—I know the product of the ex-ray machine.

Q. You have been present, have you, many times when pictures were taken by those machines?

A. Oh yes sir.

- 185 Q. Are you acquainted with the Plaintiff in this action, George R. Williams?

A. Yes sir.

Q. When did you first meet him, about?

A. I think it was in February 1913.

Q. Was it before or after he was injured on the Illinois Central Railroad?

A. Two or three months I think.

Q. I say was it before or after he was injured on the Illinois Central?

A. It was before.

Q. You met him before his injury?

A. Yes sir.

Q. In what way did you happen to meet him, doctor.

A. I am the local surgical examiner for the Loyal Order of Moose in Memphis, and he came to my office for examination. I think that was the first substantial way I met him—I may have met him in a casual way prior to that time.

Q. As you recollect, that was in February 1913?

A. I think so.

Q. Did you at that time make a written memorandum of his physical condition, as you found it from your examination there?

A. Yes sir, the Order requires an examination of all applicants.

Q. After you had made that written statement of his physical examination what did you do with it, doctor?

A. Well, I O. K.'d it and passed it on to the Order.

186 Q. Where has it been since that?

A. The application was placed on file, I suppose, with the Secretary of the Order.

Q. State the examination you made first of Mr. Williams, and what you found to be his physical condition at that time?

A. My examination consisted of examining the heart and lungs and testing the urine—getting the specific gravity and examining for albumin. It also consists in ascertaining whether they have the use of all the hands and feet—in fact, the general physical condition.

Q. In what did you examine his heart and lungs?

A. With the stethoscope.

Q. What do you mean by stethoscope?

A. It is an instrument used to aid the hearing in examining the heart sounds and lungs sounds; an instrument that is placed over these various parts.

Q. What did you find to be the condition of Mr. Williams' heart?

A. Found it alright.

Q. What did you find to be the condition of his lungs?

A. All right.

Q. What did you find to be the condition of his urine?

A. I found it normal.

Q. What did you find as to the use of his arms?

A. I found he had a normal use of his arms.

Q. What did you find as to the use of his legs and feet?

A. The same.

Q. What was his general physical condition of health at that time?

187 A. I pronounced it good.

Q. What was his appearance—his color?

A. I didn't note anything to the contrary.

Q. What physical deformity of any kind did you find in this young man at that time?

A. I don't think any at that time.

Q. When did you next see him after you passed him for the Loyal Order of Moose?

A. I was called to see him sometime in April—I don't know the exact date.

Q. In what year?

A. 1913.

Q. And where was he at that time, doctor?

A. He was at a local address in the City of Memphis—260 Simpson Avenue, I believe.

Q. Was that a rooming-house or boarding house?

A. A rooming house.

Q. Did you see him any time while he was in the hospital there?

A. No sir, I don't recall seeing him.

Q. When you saw him in April 1913, state whether you did or did not make an examination of him.

A. I did.

Q. State the nature of the examination which you made?

A. I was called to see Mr. Williams at that address, and I found him suffering pain. He asked me to prescribe for him and give him a treatment, stating that he felt like he was not improving, and asked me to make an examination and prescribe a treatment, which I did.

188 Q. What did you find from your examination?

A. I found Mr. Williams in bed and suffering very much with pains in the lumber region—that is, in the small of the back, and in the hips, and he was nauseated.

Q. What do you mean by nauseated?

A. Had sick stomach—indigestion.—On a further examination I found a deformity at the junction of the 12th dorsal or the last lumber vertebra. I think the deformity is in the 12th dorsal.

Q. Indicate to the jury on my back what you call the 12th dorsal?

A. (Witness here indicates the 12th dorsal on Mr. Harrington's back.)

Q. Did you make a digital examination of that at the time.

A. Yes sir.

Q. What did you find to be the condition?

A. I found it enlarged, and a marked separation of that vertebra from its neighbor, or adjoining vertebra.

Q. What effect, if any, would that probably have upon the spinal column?

A. It might produce pressure or traumatism.

Q. What do you mean by traumatism?

A. I mean a bruised condition, *no* slight mashed condition of the cord.

Q. If there was traumatism or injury to the cord, or a pressure on the cord as a result of the separation of this vertebra, what would be the probable effect upon Mr. Williams?

A. Well, it would produce partial or complete paralysis, 189 and also a possibility of producing local anesthesia of the skin of the lower extremities.

Q. What is the cause of paralysis?

A. Well, there are many causes; for instance, paralysis of the lower extremities can be caused from a number of different things—can be caused from a complete severance of the spinal cord most anywhere in the lumber region.

Q. What is the effect of any injury to, or pressure upon the spinal cord?

A. It might have a total or partial paralysis.

Q. Would it produce either total or partial paralysis, or anesthesia?

A. Yes sir.

Q. How long did you continue to treat this young man at Memphis?

A. I think about three weeks.

Q. In addition to the condition you found in the 12th dorsal vertebra, did you from your physical examination that you made, find any other trouble in his back or hips?

A. I found a marked tenderness and soreness in the hips.

Q. Did you or not have an x-ray taken at the time?

A. I did not.

Q. Or had anyone taken an x-ray of this man's back or hips, so far as you know, up to that time?

A. Not that I know of. It was my intention to do that later but Mr. Williams left before my treatment was completed.

Q. That was your intention?

A. Yes sir.

Q. Is there any other way ordinarily in an injury such as this, in finding whether there is a dislocation or fracture except this x-ray?

A. I think so. I believe one can locate an injury, that is by pressure. At this time I had Mr. Williams lie on his stomach and put pressure over the center of the pelvis over the back bone, between the two big bones, and with each hand on either side of the hips made pressure downwards to the knee, and with my hands on the side, I don't mean I put my weight on the body, but enough to see if there was cause of the soreness in the bone.

Q. What did you find there?

A. Found a marked tenderness on an examination of that kind.

Q. Did you make any examination of the sacrum?

A. Nothing more than that.

Q. What did you find as to the sacrum?

A. I found the same soreness and tenderness.

Q. You have spoken of the pelvis—what do you mean by the pelvis?

A. Well, the pelvis is the entire frame, the middle bony structure—you might say the middle of the skeleton, consisting of the two innominate bones and a wedge shaped bone that sits in the back for the spinal column to rest on, and known as the coccyx.

Q. Will you indicate on my back where you found this soreness in Mr. Williams?

— (Indicating.)

Q. Between the hips?

A. The thigh bone joins the pelvis on this side and this side (indicating) leaving this frame that joins in the center and comes to the front—the tenderness I noticed was through here (indicating.)

Q. Where was that with reference to the sacrum?

A. That is just to the right of the sacrum, near the junction of the sacrum and innominate bone.

Q. What did you find to be the condition of his legs at that time, as to feeling?

A. I found a total anesthesia.

Q. What do you mean by the term anesthesia?

A. I mean loss of feeling.

Q. Do you remember how you tested to ascertain whether he had this loss of feeling in his legs?

A. I tested with a needle.

Q. How thoroughly did you test him with a needle at that time?

A. I tested from the hips down to the sole of the feet, without any knowledge of Mr. Williams.

Q. What do you mean by saying without any knowledge of Mr. Williams?

A. Well, we have a way of finding out whether people have this trouble. I should think if a person was pricked pretty severely with a needle, if he did not have his mind on it he would give way to it quicker than if he was expecting it.

Q. Did he know it—did you tell that you were going to do it?

A. No sir, I don't think he did—I didn't say anything to him.

Q. Did you intend that he should know it?

A. No sir.

192 Q. From the examination you made at that time, state whether or not, in your judgment, he was affected by anesthesia in his legs?

A. I think he was.

Q. Did you form an opinion as to the cause of that anesthesia at the time?

A. I didn't figure out the direct cause. I thought it was due to this injury.

Q. Were you able to determine which one of the injuries in his back was the cause of it?

A. I am inclined to think it was due to the injury in the back.

Q. Have you figured which injury to the back caused this anesthesia?

A. Whether it — in the hip or back.

Q. Yes, whether the hip or vertebra?

A. No sir.

Q. Have you examined him since, Doctor?

A. I have.

Q. When?

A. Well, I have forgotten the exact dates. I have examined him three times since he was dismissed from my treatment I examined him frequently while he was under my treatment.

Q. When did you examine him last time?

A. The last time was today.

Q. When did you examine before that, doctor?

A. I don't remember how long—3 or 4 months. I don't remember exactly.

193 Q. You may state doctor, whether he is still affected by anesthesia in his legs?

A. He is.

Q. Are you still able to tell whether it is the injury to the dorsal vertebra, or which injury in the back is the cause of that?

A. No sir, I can't say.

Q. Can you discover any possible cause for it except the injury in his back?

A. I cannot.

Q. Who was present thos- morning- when you examined him?

A. Dr. Galloway and Dr. Liddle, and anothe^t doctor whose name I cannot recall.

Q. Dr. McLean?

A. I can't recall the name.

Q. Were they all physicians residing here in the City of Jackson?

A. Yes sir.

Q. You may *satte* whether or not, in your opinion, this anesthes^{ia} that he has is temporary or permanent?

A. I think it is permanent.

Q. Do you know any means of curing it by operation?

A. No sir.

Q. What effect will his pr-sent condition have upon his ability to walk, in your opinion?

A. Well, he will always have a lame, wobbly gait.

Q. Is that lameness permanent or temporary, in your judgment?

A. I think it is permanent.

Q. Do you know any way, by operation or otherwise, that
194 he can be cured of lameness?

A. No sir.

Q. Doctor, were you here when this case was to be tried last October?

A. I was here some time—I don't recall now the month: I believ-
it was in October.

Q. At that time did you examine any x-rays in his presence and Dr. Harris?

A. Yes sir.

Q. Did you examine such x-rays more than once, or just that one occasion?

A. That one occasion is all I have seen of any x-rays pictures in his case.

Q. Doctor, from your examination of him, your treatment of him, and your examination of these x-rays Dr. Harris showed you, you may state what is the matter with Mr. Williams' back and all about his body?

A. Well, according to the showing of the x-ray he had a slight separation or fracture of that innominate bone near where it joins the sacrum, on the right side it seemed to be more pronounced.

Q. That bone is separated from the sacrum, you mean?

A. Yes sir.

Q. About how much separation is there of that bone from the sacrum?

A. I can't say positively; it seemed to be abnormal.

Q. Would you indicate on my back about just where that separation is between the sacrum and back bone?

A. The sacrum is here; the separation is right about
195 here—(indicating on Mr. Harrington's back between the innominate bones and this coccyx or sacrum).

Q. What effect will the separation of the sacrum from this other bone naturally have on any person?

A. It will produce a lameness and soreness.

Q. What, in your opinion, is causing this lameness of Williams—basing it on all you know from your examination and treatment of this man, and your examination of this x-ray?

A. Well, I think the injury in the back has a great deal to do with his present condition.

Q. What is causing the lameness?

A. Although the injury to this pelvis is another cause, and I think that is directly responsible for the pain and soreness that is manifested there all the time.

Q. What do you say as to this separation of the sacrum from those other bones—whether that condition is temporary or permanent?

A. I think that is permanent.

Q. Is there any way, by operation or other wise to cure it.

A. No sir.

Q. Was there ever a way, if an x-ray had been used, to cure it?

A. I don't think so, those injuries are very rare, but they do occur, I have not known of any injury of that kind that could be improved on, only in the way of a brace.

Q. Does he wear a brace?

A. Yes sir,—I suppose so, I have seen him on three occasions with this brace on.

Q. You may state whether, as a physician and Surgeon, in your opinion, the brace he is wearing is suitable and proper appliance for a man to wear in his condition?

A. I think it is—it is durable—it answers the purpose, it is not the exact kind of brace I put on him in the beginning, which was only temporary, but it was something similar to the one he wears now. The one he wears now is more durable and strong.

Q. Doctor, you may state *whether* the use of this brace is a temporary thing, or whether he will have to *sue* it through life?

A. I am inclined to believe he will have to *sue* it indefinitely.

Q. From your examination, what do you say as to this man's ability to work?

A. To do manual labor, I think he is totally disabled.

Q. What is your opinion as to whether he will ever be able to do manual labor?

A. It is very doubtful.

Q. Doctor, do you know how his weight now compares with about what he weighed when you examined him for the Moose?

A. I don't recall; I think he is off a little bit—I don't know just how much.

Q. By the way, Doctor, when he was being examined this morning by you physicians, was some x-rays taken of him also?

A. Yes sir.

Q. In one position or different positions?

197 A. Different positions.

Q. Is that essential in order to get at the real condition at times?

A. That helps.

Q. Doctor, can an *ex-ray* be made to show any more than the real truth?

A. It cannot.

Q. Can it be made to show less than the real truth?

A. If the positions are not right the x-ray is worthless.

Q. It wouldn't show the real truth?

A. No sir.

Q. Explain how it is that you can — one to show the whole truth, and how to not show the whole truth?

A. For instance, you might have a fracture of the middle bone in the hand—an x-ray coming in this position would show it (indicating) whereas, if you take it from above through all the bones it will not show that fracture of the middle bone.

Q. The failure to get the whole truth might occur even where the man using the machine is honest?

A. Yes sir. I have known that.

Q. And if he didn't want to get at the truth, it would — easy to hide it, wouldn't it?

A. I suppose so.

Cross-examination by Mr. Wells:

Q. Doctor, what are the various — for this anesthesia that you refer to?

A. I say they are very numerous.

198 Q. Mention some of them, please, beside the ones you have already mentioned?

A. Well, there is pressure, laceration of the membranes of the chord, and of course a complete severance of the cord would be one, and a tension on the cord would also produce anesthesia.

Q. In fact there are a great many causes for that partial paralysis in the lower limbs?

A. Yes sir.

Q. You spoke a while ago of persons being able to assume that—that is, not giving any response to an examination of that kind; you have seen people that were normal in every other respect that you could stick pins in their legs without flinching, hav-n't you?

A. I have professionally—I think I have seen one or two that would permit you to drive a pin in this tendon right above the knee.

Q. What you call the pelvis is the frame of the lower body or two of the largest and strongest bones in the body, ar-n't they?

A. That is true, yes sir.

Q. And the wedge shaped bone upon which the spine rests, and to which these other bones are joined, is the sacrum?

A. Yes sir.

Q. These two heavy bones that form the frame of the body, and the sacrum that joins them together—the pelvis and sacrum are joined together by a thick cartilage ar-n't they?

A. Yes sir, all immovable joints are joined with this cartilage.

199 Q. About what distance is it from the front of the man's body back to the point at which these bones join?

A. Average about four inches; of course, it depends upon the size of the individual.

Q. In taking a picture of the front of that portion it is just like taking a picture in a hat—the body would be in a cup shape position like that (showing hat)?

A. Yes sir.

Q. Where those bones join the sacrum, back that way (showing) isn't it true in order to get the exact situation the ex-ray picture has got to be directly in line in front?

A. It could be either in front or the back.

Q. It has got to be direct?

A. Not necessarily—it could be a little to the right in the rear. If you are looking for a fracture of the right innominate bone, you could take the picture from the rear and a little to the right.

Q. Isn't it a fact, in taking a picture of a man in front to ascertain whether there is a separation of these bones, the ex-ray machine has got to be directly in front in order to show it?

A. I don't believe that would show it to the best advantage; these bones come in front and from the pubic arch in front of the pelvis.

Q. If a picture is taking like this (showing) it will show one of these places and won't show the other at all?

A. Yes, it is true, if you hold it either to the right or left, at an angle.

Q. It wouldn't show one, but would show the other?

200

A. Yes, sir.

Q. So it is necessary, in order to get the true picture—the thing to be directly in front?

A. Well, to get the two, it will show to the best advantage, if you wanted to show the two in the same picture. It is like any other photograph machine—if it is set at an angle and misses this connection it wouldn't show in the picture at all. It wouldn't show the left, and if you set it there (showing) it wouldn't show the right.

Q. If you set it there (showing) it would show the entire situation?

A. Yes, but I don't think it would show to the best advantage.

Q. You are talking about the picture that was shown you by Dr. Harris; isn't it a fact that that kind of a picture showed you by Dr. Harris, made of a norman man with nothing the matter with his back, you can make just that sort of picture he showed you?

A. I don't recall the exact position, but I am inclined to believe that showed a diagonal—that the camera was at a diagonal position to the subject.

Q. I believe you say you know nothing about the mechanical handling of ex-rays, but are somewhat familiar with the results?

A. I mean I don't know anything about the operation, but I have had a great deal of ex-ray work done.

Q. Isn't it true that this very picture shown you by Dr. Harris—I mean a similar picture, but of a norman man that had never had anything the matter with him—can be taken to show exactly what that picture — Dr. Harris showed you?

A. No sir, the picture I saw of Dr. Harris showed an
201 abnormal condition of the pelvis.

Q. You never saw that picture taken?

A. No, sir.

Q. And don't know anything about what position the machine was in when it was taken?

A. Nothing more than it shows up the right innominate bone and judging from that—

Q. How many pictures did he show you?

A. I believe he had two, but the one I paid more attention to was the one that showed the right innominate bone, and judging from the displacement of this picture, the machine must have been at almost right angles to the body, or acute angle, at least.

Q. I will ask you this question; the examination you made of the man was an exterior examination—you didn't make an examination by ex-rays at all?

A. No, sir.

Q. And what you found were merely symptoms; as I understand you say you found tenderness?

A. I found objective and subjective symptoms.

Q. You couldn't see in there at all?

A. No, sir.

Q. What objective symptoms did you find?

A. Well, objective symptoms would be observing the patient, by moving around, and the way he was not able to move himself, and upon a physical examination I was able to ascertain the seat of pain.

202 Q. Where it was?

A. Yes, sir.

Q. There was nothing that you could ascertain without an ex-ray examination, as to what the conditions were at the junction of these bones, was there?

A. Nothing more than the symptoms. The symptoms are merely an indication of trouble somewhere—the kind of symptoms that anybody uses to locate the trouble.

Q. If a critical physical examination was made, and a proper ex-ray examination made of this man, it would show in those pictures, and show from that examination what was the matter with him, wouldn't it; if there was a separation it would show?

A. Yes sir, if the machine was placed at the proper angle to get the best exposure.

Q. Would it show if it was taken directly in front of it, if it was in the sacrum and pelvis?

A. I don't believe it would.

Q. Why?

A. In order to get the best picture of that location you must place the camera at the point of best advantage, and that would be placing it at an acute angle, any way, to this pelvic bone.

Q. If there are two bones here, and they are joined to this bone (illustrating) and you take a picture directly in front, what is the reason it won't show the separation?

A. You understand, the pubic bone might throw a shadow over the seat of fracture; you have to keep away from things of that kind. If you are looking for a fracture you must not have any bones between your camera and the fracture.

203 Q. If you are taking the picture straight in there, there wouldn't be any bone between there and the sacrum, would there?

A. The pubic bone would interfere—the point is this; unless you clear the field of everything—buttons, and pieces of metal and things of that kind, you are likely to have a shadow over the seat of the injury——

Q. I am ta-king about a man that is stripped——

A. If you will allow the camera to take a position which will produce an angle and throw the pubic bone in line with it, that might make the seat of the injury.

Q. You were not present any time when there was an ex-ray examination made of this man?

A. No sir, only today.

Q. You were not present when any of these pictures were taken you have referred to?

A. No, sir.

Q. Or any other point, except here today?

A. No, sir.

Q. At the examination that was taken today, if there was one—I don't know anything about today, if there was one—do you know whether there was any representative of the defendant there at all?

A. No, I do not.

Q. You were never at any examination when the representatives of both sides were there to see how it was made, were you?

A. No sir, I don't think so.

Witness excused.

204 (Court here adjourned till 2.30 P. M. at which time Court convened, and the following testimony was taken.)

Dr. E. B. LIDDLE, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Harrington:

Q. What is your name?

A. Edward Bloomfield Liddle.

Q. Where is your home?

A. Jackson, Mississippi.

Q. You are of what occupation or profession?

A. I am a physican.

Q. Are you a graduate of any regular college?

A. Yes, sir.

Q. What medical college?

A. Tulane.

Q. Do you make a specialty of any line of work?

A. Ye- sir, ex-ray work, and kidney and bladder and venereal diseases.

Q. You are not in the regular practice at all?

A. No, sir.

Q. Do you know the plaintiff in this action George R. Williams?

A. I met him this morning.

Q. Did you take an ex-ray showing the right hip and the condition surrounding it?

A. Yes, sir.

205 Q. Have you got one of those with you?

A. Yes, sir.

Q. Will you produce it?

A. Yes sir, (exhibiting ex-ray plate).

Q. That is taken of the right hip separately, is it?

A. Yes sir, this is the right one.

Q. You now have the ex-ray plate in your hand, showing the ex-ray picture you took of his right hip, taking the right hip separately?

A. Yes, sir.

Q. Kindly hand it to the reporter to be identified as an exhibit in this case.

(This plate is marked Exhibit "A" to testimony of Dr. Liddle.)

Q. Did you also make an ex-ray picture of his left hip?

A. Yes, sir.

Q. You have that here with you, have you?

A. Yes, sir.

(This plate is marked Exhibit "B" to testimony of Dr. Liddle.)

Q. Have you still another picture of one of his hips taken at a different angle?

A. Not of his hip; of another hip.

Q. These are the only ones of his hip?

A. Yes, sir.

Q. Did you take them as accurately as you could?

A. As accurately as I could, yes sir.

Q. And you say they are approximately correct ex-rays?

A. Yes, sir.

206 Cross-examination by Mr. Wells:

Q. Your name is Dr. Liddle?

A. Yes, sir.

Q. Doctor, who was present at the time these pictures were taken?

A. Dr. Galloway and Dr. McLean.

Q. Anybody else?

A. That's all.

Q. E. H. Galloway of this city?

A. Yes sir, and S. H. McLean.

Q. Did you make any physical examination of this man you were taking the pictures of?

A. I watched them do it.

Q. They did make a physical examination of him, did they?

A. Yes, sir.

Q. You didn't make any?

A. No, sir.

Q. You are not prepared to make any statement on that subject at all?

A. No, sir.

Q. Well, now, when this man assumed a position to have those photographs taken, what position did he assume voluntarily first?

A. He lay flat on the table and then I straightened him out.

Q. Did he undertake to take any position for the taking of the photographs without your instructions?

A. Well, when I took the picture of the spine, he asked wasn't it better to flex himself.

207 Q. He undertook to suggest how the pictures should be taken?

A. He didn't say to do it, he just asked about it.

Q. He seemed to show a good deal of familiarity with the position that he ought to assume?

A. Well, he asked about it—I don't know whether that means to show any familiarity.

Q. You only took two photographs, I understand?

A. I took two more.

Q. Where are they?

A. They are at my office.

Q. Why didn't you bring them with you?

A. Because I was requested to leave them there.

Q. You were requested to leave those there?

A. Yes sir.

Q. Why?

A. We thought those pictures showed the best.

Q. How did you take those—what position?

A. The same position.

Q. And there were two others taken, and you were requested to leave them at your office, and not bring them?

A. Yes sir.

Q. So you were requested not to bring with you the full result of your investigation down there, were you?

A. Well, they asked me to just bring these two.

Q. And you were requested not to bring the others?

A. They said leave those there.

Q. Who made this request?

A. The lawyer.

Q. Mr. Harrington?

208 A. Yes sir.

Q. You have not any objection to bringing those, have you?

A. Not a bit—I have one of them here.

Q. Were they all taken in the same position?

A. Yes sir, he was lying the same way in all.

Q. Was the instrument in the same position?

A. No sir, because I had to move up the spine a little higher to get one.

Q. Which one was that?

A. That is neither one of these.

Q. The one you didn't bring?

A. Yes sir.

Q. I see. When you took these two photographs you have already presented here, did you take them with the instrument directly in front of the man?

A. Right over the hip—right over the side.

Q. Perpendicular photographs, or oblique?

A. Perpendicular—he was lying here, and I had the instrument here (showing).

Q. Not at an angle?

A. No sir.

Q. In order to take a correct photograph to show the connection between the sacrum and pelvis bones of a man's body, it is necessary to take a straight photograph, isn't it; you can take it at an angle and show that, can you?

A. It is better to take it right over it, straight down.

Q. Straight down?

A. Yes sir.

209 Q. It is not true, as a matter of fact, that in order to get a correct picture of that, you have got to take it at an angle?

A. It is according to which part you want; some parts you have to—

Q. I am talking about the part of the sacrum that connects with the pelvic bones. Some physicians have told me the pelvic bones are two large bones in the lower part of a man's body, and they are joined together with a wedge shaped bone at the back, called the sacrum, with cartilage between them?

A. Yes sir.

Q. Where you want to get a perfect picture of the bones of the pelvis, where they join the sacrum, you take it straight from the front—that is the proper way?

A. Yes sir.

Q. You don't have to take it from an angle to either side, and that is the improper way?

A. I have never taken one that way.

Q. And it is not the recognized way of taking it?

A. Some authorities may do it, but I have never seen any.

Q. And you don't know of any that require that?

A. No sir.

Q. When you undertake to do that from the front the pelvic bones are not in the way of the photograph?

A. Of the hip?

Q. Yes, of the joinder of the sacrum and pelvic bones?

A. No sir, you can see it plain.

Q. The pelvic bones are not in the way—you don't have to take it at an angle to avoid either one of the pelvic bones, or any portion of the pelvic bones?

210 A. No sir, you can see it.

Q. You have not undertaken to say anything about what these pictures developed—you simply bring them here—that's all?

A. Yes sir.

Q. You made no physical examination of the man, and are not prepared to testify about that?

A. No sir.

Q. You simply made a photograph, and bring the photograph—that is all you know about it?

A. Yes sir, and to explain that photograph.

Q. Will you bring the other two pictures that you were requested to leave and not bring here, and make them exhibits to your deposition—you have no objection to that, have you?

A. No sir. I have one of them here.

Q. If you have one of them, we will get that and put it here now. Why did you bring that one, doctor, if you didn't bring the other?

A. I have got both of them here.

Q. Well then, bring both of them and make them exhibits to your deposition.

A. Yes sir (showing plates). I didn't know I had them.

Q. Just hand them to the reporter and let him identify them as he has the others.

(These plates are marked Exhibit No. 1, and Exhibit No. 2, to Cross-examination of Dr. Liddle.)

211 Redirect examination by Mr. W. H. Watkins:

Q. You stated that Dr. McLean and Dr. Galloway, in your presence, made an examination of him?

A. Yes sir.

Q. To what tests did you see them subject him?

A. I saw them prick him with a needle and make measurements.

Q. What seemed to be the effect upon him?

A. It didn't seem to have any effect on him at all.

Q. How deep did they dig needles and pins into him?

A. I didn't look close.

Q. I will ask you whether or not it is a fact that they brought blood from him?

A. I didn't see any blood, because I was not watching it all.

Q. Speaking about those four plates; since looking you find you did not bring them all?

A. Yes sir.

Q. I will ask you if the two plates you exhibited first were not of each hip taken separately?

A. Yes sir.

Q. I will ask you if the other two plates were not of both hips taken together?

A. Well, it was one picture that included both hips.

Q. Isn't it a fact that taking the hips separately, it shows a better view and picture?

A. Not if the pictures come out the same. These came out better.

Q. Which came out better?

A. The one that included both.

Q. Ordinarily you say, however, a single side of the hip would be better?

212 A. If it comes out in the development the same it would be better.

Q. You have not put before the jury all the pictures you took of this man's hip?

A. Yes sir.

Recross-examination by Mr. Wells:

Q. The one which you took of both come out better?

A. Yes sir.

Q. That is the best photograph?

A. Yes sir.

Q. That was the one you were requested not to bring?

A. They told me I could leave it—they didn't say to leave it.

Q. The best photograph that you took, according to your judgment, is the one you were requested not to bring, and that you did not present at first?

A. Yes sir, but if these other pictures had come out as good as that, they naturally would be better.

Q. But they didn't come out; the best photograph you made of the whole situation was the one that you first said you didn't bring, but they told you not to bring, that wasn't made an exhibit to your deposition by counsel?

A. I knew I brought this one—it was the other one I thought I hadn't brought.

Q. But the best one, was the one you made an exhibit to your cross-examination, and was not the one presented by counsel?

A. No sir.

213 Redirect examination by Mr. Watkins:

Q. Isn't it a fact that he didn't ask you not to bring anything?

A. He didn't say not to—he just said he wanted to use the other two.

Q. Has any improper influence been brought to bear upon you in this case, to swear to anything that was not true?

A. I don't remember his exact words—he said "You can leave them," or "It is not necessary to bring them."

Q. I say, was there any effort, so far as you could ascertain, to use any improper influence upon you by Mr. Harrington at all?

A. That is all he said.

Recross-examination by Mr. Wells:

Q. Did you tell him that picture was the best of all?

A. I told him I thought that was the best one.

Q. You were making the pictures for him, and told him that was the best one, and that is the one he told you you could leave, and not bring with you?

A. He didn't tell me to leave it.

Q. He told you he didn't want it?

A. He said he wanted those two.

Q. But you told him the other was the best?

A. In my estimation, I thought it was the best.

Q. You told him that?

A. Yes sir.

By Mr. Watkins:

214 Q. As a matter of fact, there might be a difference of opinion as to which is the best?

A. Of course, there are always difference- of opinion.

By Mr. Harrington:

Q. I told you I wanted to show this jury, so they could see each hip separately?

A. Yes sir.

Q. And I didn't want to use in evidence the pictures that showed the two hips taken together?

A. I don't know that you said those words.

Q. That was the substance of it?

A. Yes sir.

Q. I wanted the jury to see the two hips separately—each one taken separately?

A. Yes sir.

(Witness excused.)

215 Dr. E. H. GALLOWAY, a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Harrington:

Q. What is your name?

A. E. H. Galloway.

Q. Where do you live?

A. This City—Jackson.

Q. You are of what profession?

A. Physician.

Q. How long have you been practicing medicine in Jackson?

A. Eleven and a half years.

Q. Are you a graduate of any medical college?

A. Vanderbilt University.

Q. Where is that, Doctor?

A. Nashville.

Q. Have you met the plaintiff in this action, George R. Williams?

A. I have.

Q. Did you ever treat him in a professional way?

A. I have not.

Q. When did you first meet him?

A. This morning.

Q. Did you make an examination of his physical condition this morning?

A. I did.

Q. And all the knowledge you have of his condition is from that examination?

A. That is correct.

216 Q. What was the nature of the examination that you made, Doctor?

A. Well, I made a general examination of him—of his general physical condition.

Q. Well, what did you find in particular?

A. Well, the chief thing that I found relative to his condition, was in the search for sensation: I found that on pricking his limbs that he complained of no pain—that was the chief thing I found.

Q. To what extent did you prick his limbs, and with what?

A. With a needle. I didn't actually do that myself—I was pres-

ent with Dr. McLean and Dr. McLean was pricking his limbs. He used a pin.

Q. How oftent did he prick him?

A. I suppose 20 or 30 times on each limb.

Q. How deep?

A. Just through the skin, I should say, each time.

Q. Any time enough to draw blood?

A. On one occasion it did.

Q. You may state whether he gave any evidence of pain or feeling of any kind?

A. He did not.

Q. Did you apply the usual test to the sole of his feet?

A. We did not.

Q. Doctor, what do you call that?

A. It is called anesthesia.

Q. What is it that causes anesthesia, doctor?

A. Anesthesia of the limbs is caused by some trouble of the spinal chord.

217 Q. Always some trouble of the spinal cord of some kind?

A. Yes sir.

Q. There is no other cause known to the medical profession except some affection of the spinal cord?

A. Not so far as I know.

Q. Did you examine either the last lumbar or the 12th dorsal vertebra in his back?

A. Wee did.

Q. Which was it you found of abnormal size?

A. I don't know whether it was the last dorsal or the first lumbar.

Q. How did that vertebra, which ever it was, compare in size with the other vertebrae?

A. The spinous process seem to be slightly enlarged.

Q. Doctor, when a man gets anesthesia, due as you say as to some affection of the spine, what is the usual effect, temporary or permanent?

A. It is usually permanent.

Q. Suppose a man had been perfectly well and had good use of his legs, and was injured, say in March of 1913; was that shortly therefore affected by anesthesia and affected ever since by anesthesia, as this man seems to be from your examination, having lasted that long a time—what do you say as to whether it is probably permanent or temporary?

A. I would say it is probably permanent.

Q. As far as you can determine from your examination, is he suffering from anesthesia?

A. Yes, so far as I know.

Q. As far as you can determine?

A. Yes.

218 Q. Did you make any examination as to the reflexes?

A. His patellar reflex is slightly increased.

Q. Explain what you mean by the reflex?

A. That is the knee-jerk—when you tap the knee and the knee jumps.

Q. In his case you found what?

A. Slightly increased; more than normal, apparently.

Q. What does that indicate?

A. That indicates some affection of the spinal cord.

Cross-examination by Mr. Wells:

Q. Doctor, did you undertake to make a critical examination of the man's physical condition?

A. Only as I have stated. I also listened to his heart and lungs.

Q. How did you find his heart?

A. Normal.

Q. How did you find his lungs?

A. Normal.

Q. How about his pulse?

A. It was normal.

Q. Normal pulse, normal heart and normal lungs?

A. Yes, I judged of the pulse by the heart beat; I don't believe I actually felt his pulse.

Q. How about his muscular action elsewhere in his body?

A. It was normal.

Q. And how about the appearance of his body in other respects except those in which you have indicated symptoms was he in a normal condition?

219 A. Normal condition.

Q. In other words, you couldn't find anything the matter with him, except his anesthesia?

A. That's it.

Q. That was all?

A. That, and the enlargement on that one vertebra.

Q. To what extent was that—large or small, or serious or slight?

A. It was slightly enlarged, I should say probably an eighth to a quarter inch.

Q. It is not an unusual thing to find that in a man's vertebrae?

A. We see that some times.

Q. In perfectly healthy—that is, ordinarily healthy, you find that in people nor seriously affected, don't you?

A. Yes, that is possible.

Q. You didn't regard that as being a very serious matter the apparent enlargement of that vertebra?

A. Not unless it means some pressure, or something of that sort.

Q. Did you discover any separation of the pelvic bones from the sacrum?

A. You mean by a physical examination, or by looking at this plate?

Q. Either way?

A. I did not. I probably couldn't tell by a physical examination.

Q. Well, you could tell by an X-Ray examination?

A. Yes.

220 Q. And you didn't find either?

A. No sir.

Q. So, the result of a physical examination, as far as you were

able to make it, according to subjecting him to all the tests you were able to make in that direction, and according to the results of the X-ray examination, which was made in your presence and under your direction, there was nothing of that kind—there was no separation of the pelvic bones from the sacrum on either side?

A. No sir, I don't think there is.

Q. There is none?

A. I don't think so.

Q. What were some of the many causes of this anesthesia of the lower limbs? As I understand from other physicians, there are a great many causes for that, or might be?

A. Yes sir, alcoholism might be a cause of it; syphilis might be a cause of it, and of course injury, as already stated, could be a cause of it. I don't recall anything else at present. Those are the chief causes.

Q. What an attack of gonorrhea have any such tendency as that?

A. I would not be willing to say.

Q. You don't know about that?

A. I don't know.

Q. As I understand, there are various and sundry causes, almost enumerable?

A. Yes, various causes,—those are the chief one— I recall at present.

Q. And beyond the subjective symptom, anesthesia of the lower limbs, you found nothing upon this examination—physical examination and x-ray examination, beyond this small enlargement of one of the vertebra?

A. That is all—that is, of the spinous process of the vertebra.

Q. And you found no separation at all of the pelvic bones from the sacrum?

A. No sir.

Q. Either by physical examination or by x-ray examination?

A. No sir.

Q. And you are prepared to say then, to the very best of your judgment, that condition does not exist with him?

A. I do not think it does.

Q. Well, you have undertaken to ascertain—that is what you were trying to do, wasn't it?

A. I meant by that that I am not an expert in the interpretation of x-ray plates, but I have had some experience in the study of them.

Q. Well, those x-ray plates that you were studying at the time were taken by a competent x-ray man?

A. I think so—he is a competent man, yes sir.

Q. Doctor, I want to ask you about this sort of thing—you have had experience in it and I have not, I am just trying to get at the truth—have you seen a great many people, or some people, who subject themselves to having pin pricks in their limbs that way, without giving any evidence of sensation, who were not paralyzed?

A. I don't know that I have seen any.

Q. Haven't you seen, time and again, people who went around and made a specialty of that business—let you stick pins in their limbs that way?

A. Yes, I have seen that—I have done that myself.

Q. You have stuck them in?

A. Yes sir.

Q. Still there was apparently nothing the matter with the man?

A. Yes sir.

Q. Why is that; what condition brings that about?

A. Well, it is just a man able to stand that much pain without manifesting it.

Q. Well, it is a fact then that a man can do that sort of thing if he wants to—some men?

A. Some men—ordinarily I don't think so.

Q. Ordinarily, I understand, but there are men who can do that very easily?

A. Yes sir.

Q. Haven't you seen, at one time or another, a man that would have a pin and prick up part of his flesh and run it right through that way, without apparently having any sensation about it at all?

A. Yes sir, I have seen that.

Q. And not a man who was crippled up any way whatever, but appeared to be in a normal condition, wasn't he?

A. Apparently so, ye- sir.

Q. What was there, if anything, in the condition of this man that you made this physical examination of this morning, beyond the mere fact that he kept his limbs stationary and didn't give evidence of pain from these pin pricks? What was there in
223 that physical examination to indicate any serious injury to him, beyond that?

A. Well, he apparently had anesthesia; he had a slight increase of his reflex or knee-jerk, and this slight enlargement on the spinous process of the last dorsal or first lumbar.

Q. That was all?

A. Those are the three things we found.

Q. Nothing else?

A. Nothing else.

Q. Otherwise his physical condition is apparently normal?

A. Yes sir.

Q. His heart beat, pulse, muscular action, and everything else is normal about him, except that?

A. Yes sir.

(Witness excused.)

224 Dr. T. T. HARRIS, a witness called on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. Harrington:

Q. Where is your place of residence?

A. Omaha, Nebraska.

Q. How old a man are you?

A. 32.

Q. What is your occupation or profession?

A. Physician and surgeon.

Q. Are you a graduate of any regular medical college?

A. I am.

Q. What medical college?

A. John A. Creighton, Medical College of Omaha.

Q. When did you graduate there?

A. 1910.

Q. What have you been doing since you graduated?

A. Practicing medicine some, and surgery mostly.

Q. Are you on the staff of any hospital in the City of Omaha?

A. I am.

Q. What hospital?

A. St. Joseph's Hospital.

Q. Are you affiliated with any other hospital there?

A. I work at the Presbyterian Hospital and St. Catherine's Hospital.

Q. In connection with your surgical work and other work there, do you use the x-ray?

225 Q. Do you own personally an x-ray machine?

A. I do.

Q. Do you operate it personally?

A. I do.

Q. What experience have you had? In the use of the x-ray machine?

A. I have been taking x-ray pictures about six years. I have made about two thousand exposures.

Q. For yourself or others or both?

A. Both; mostly for other doctors who refer cases to me.

Q. What other surgeons in Omaha?

A. Dr. Allison, Dr. Dwyer, Dr. Barnhard, Dr. Shanahan, Dr. Canal, Dr. Bowler, Dr. Switzlander, and I have done a good bit of work for the packing houses—Allingham, and a good many others.

Q. Do you hold any official position in the City of Omaha?

A. I do.

Q. What is it?

A. Chief of the police surgeon's staff.

Q. How long have you been police surgeon in Omaha?

A. 5 years.

Q. Are you acquainted with the plaintiff in this action, George R. Williams?

A. I am.

Q. When did you become acquainted with him?

A. In July 1913.

Q. And under what circumstances?

A. He came to my office to be treated.

Q. Did you examine him?

226 A. I did.

Q. To what extent have you been treating him since that time?

A. I have kept pretty close observation of him, and he was under my direction for I suppose three or four weeks at least, immediately after I first saw him. Since that time I have seen him occasionally up to the present time.

Q. Where have you seen him? When you have seen him from time to time?

A. At my office.

Q. In Omaha?

A. Yes.

Q. How far is his home from where you live?

A. He lives some place out in the State, I don't — exactly where now.

Q. When you examined him what examination did you make?

A. I made a complete examination of his physical body; stripped all the clothing off, and examined for deformities. And where ever there was anything wrong—sensation or shape or function.

Q. In addition to the ordinary physical examination, did you use the X-ray machine?

A. I did.

Q. And from your examination and your treatment of this man you may state what you found his condition to be?

A. I found that he has a diminished use of the lower part of his body, meaning the legs, and perhaps the lower part of the trunk, or not perhaps, but the lower part of his trunk, and his legs
227 and feet. There was at that time diminished sensation—that is, the sense of pain was diminished. That seems to be still more diminished at this time, than it was when I first saw it.

Q. You mean he has even less sense of pain now?

A. Yes.

Q. Go ahead state what you found?

A. There was a slight enlargement or prominence of the first lumbar vertebra—the spine at the back part—of that part of the back bone in the small of the back, one of the limbs there is more prominent than it should be. The hips do not tilt normally, that is, do not have the same relation to the spine that they normally do, but one is elevated above the other. The hip bone, this girdle that surrounds the lower part of the trunk of the body tilts. The X-ray shows that there is a relax sacro-iliac joint. I will explain that: this girdle that surrounds the lower part of the body, commonly spoken of as the hip bones, is a broad band or bucket shaped bone in the back, to which there is a wedge shaped or keystone shaped bone that fits into a proper notch, and on top of this wedge or keystone is built up the different segments of the bones which form the back bone. Then the hip bones come into the sides of this girdle or bucket shaped bone at the lower part of the body; the legs come into that and extend down, so when we are standing erect the weight of the body comes on to this keystone and forces it down into this girdle or band here. In his condition, one of these joints between this hip bone and this keystone shaped bone, or sacrum, is sprung
228 apart normally, the joint where these unite, is a fixed, solid joint and there is no motion—just a little bit of springiness to it, is all, but in his condition it is sprung apart and there is considerable motion in that, so when the weight of the body comes on that it spreads it apart.

Q. How far is that sacrum separated from the other bone?

A. I would say that that varies according to the position he is in, and the amount of tension put on it, and the way he is lying, etc. Sometimes it will perhaps spring apart—I think one of these X-rays show it is sprung apart over an eighth of an inch.

Q. If he is lying down how might it be?

A. Well, it would fall together.

Q. And could it be pressed together.

A. Yes. I have a girdle on him that has metal band around that to hold it together now.

Q. Who directed this appliance that he exhibited to the jury?

A. I did.

Q. In your judgment is that necessary for this young man to use?

A. It is.

Q. Will it be through life?

A. It will be.

Q. What is this X-ray machine—how is it worked?

A. The X-ray is a form of energy which is developed in glass ball by an electric current. This X-ray will penetrate any substance, but the denser the substance is the less rapidly the X-ray will go through it. In order to get a permanent record of the shadows cast by the X-ray we use a photographic plate, which is a glass plate coated over with a certain chemical solution that fixes the shadows cast upon it. Now the X-ray generates in a glass ball, we will say, and throws its rays out in a given direction; now if anything is put between the source of the X-rays and this plate it casts a shadow, just as my hand casts a shadow on this paper here from that light (showing). If we had some means of making that shadow permanent, that would represent the same relation to the ordinary electric light that the radiogram has to the X-ray itself.

Q. Taking this loose sacrum; if you were taking an X-ray of that, would you always get it separated, or always together, or sometimes separated or sometimes together—just state the facts, how the machine would work on that?

A. Well, the machine would always represent a true shadow of a substance put between the plate and the light. If you wanted to show, for instance, a crack between my fingers to the best advantage, I would turn my fingers so the crack would show up better on the plate. I can turn my hand so the crack will not show on this plate. There comes a point when the shadow will be at its true distance, but you can't make the shadow greater than it is. You can make it less than it is. You can close that crack up entirely in the shadow, but you turn your hand to a certain point and it represents the shadow as it actually is—but you can't make it greater than it actually is.

Q. Is there any way by which, with an X-ray, you could make the opening or distance between this hip bone and the sacrum wider than it is?

A. No, there is not.

Q. But are there ways by which you could make it look less than it is?

A. Yes.

Q. How might that occur and yet the picture be taken accurately?

A. By the patient being turned so this crack does not come in line of the X-ray. If the patient were turned so that the crack did not come in line—if it runs to one side. This line is normally a little bit at a slant, and if you take the picture right through from the front to the back, it won't show as plainly as it would if you turn it a little to one side.

Q. If you took it lying down, how might it be?

A. The bone could be pressed together so it wouldn't show at all, or they might be pulled apart by his position so it would show.

Q. Is it possible for the X-ray to make it any bigger than it is, when the man is in motion?

A. No sir.

Q. How would the picture be taken so as to show the distance these bones are actually apart, in his ordinary condition?

A. We take off all the supports which he has on and stand him up, would perhaps separate that joint more than any other way, but if he was lying on the table, so as to turn this crack in the direction of the rays of light then we can show it, if there is no support
231 on there to hold it together, or his position be such as not to hold it together.

Q. May his position hold it together at all?

A. Yes, sir.

Q. And it may be pressed together so as not to show at all?

A. I think it would show if you get the right direction, but his position would close it so as to show very little.

Q. Among the x-rays you have taken, have you taken an x-ray that shows it at its full slack?

A. I have.

Q. What position did you put him in?

A. On his back, and turned just slightly to the side—just turned with the prominence of the back bone a little bit—he was still lying on his back, but at a slight angle.

Q. Did you take that correctly?

A. I did.

Q. And you have the x-ray plate with you that you took at that time?

A. I have.

Q. Does it show the absolute truth as to the separation of that bone?

A. It does.

Q. Will you hand it to the reporter to be identified?

(This plate is marked Exhibit "A" to testimony of Dr. Harris.)

Q. Doctor will you stand up before the jury and explain that plate—

A. First I will say that a bone being a denser substance
232 than the flesh, the representation of it is lighter on the plate, because so much x-ray couldn't go through the bone. The

flesh being soft tissue, the x-ray goes through and makes it dark, therefore the lighter portion is the shadow of the bone. Now here is the head of the femur or hip bone on that side, and here is the head of the thigh bone on this side (showing). The hip bone is this broad bone, represented there by that shadow, and the sacrum, or this wedge or keystone shaped bone is this part which comes down in here, or arrow shaped bone, and the back bone or spinal column is built of segments resting right on that. This is behind and this is in front. This is almost a circle this way. Here we can see a dark line running up—that dark line is the separation between the sacrum and the hip bone. You see this runs up and takes an off-set and then goes on again, possibly about a quarter of an inch.

Q. So this dark shadow is what represents that separation?

A. Yes, sir.

Q. Would it be possible to make a picture which was false in that respect?

A. No, sir, it would not.

By Mr. Harrington: Did all the jury see it?

(One juror says he did not.)

Q. Explain it over, doctor?

A. Here is the hip bone, which comes to the front, and that keystone or wedge shaped bone comes between these two bones.

233 Normally that is cemented together with tense ligaments and there is barely a faint line that shows the junction of the two bones. Here is the line of separation in this case (showing). Where this would come right across smooth as on that side, it is off-set. When the weight of the body is put on the back bone it forces this wedge shaped bone between and separates these bones around the lower part of the body—the pelvic bones or hip bones.

Q. What is the medical name?

A. Os innominatum—the bone without a name.

Q. What is the effect on Mr. Williams, or any other man, of this separation from the sacrum of this other bone?

A. It causes pain when he stands upright, due to the stretching of the bones apart. When he is sitting it will produce pain if his weight happens to fall just right upon this; it disturbs the nerves running down the lower limbs and controlling the pelvis, or the genital organs and rectum, etc. The nerves supplying the lower part of the body are formed up partly of filaments that come out of the spine at this point, and the tension and perhaps the formation of sciatica around these nerves interferes with their normal action, which affects his ability to lift weights or even support the weight of his body without aid.

Q. What affect does it have on his ability to walk?

A. In walking he is supporting the entire weight of the upper part of his body on the sacrum, and it presses the bones apart and causes tension on the nerves, and he is unable to walk to any extent on account of it.

234 Q. What would he naturally have to use to walk with?

A. He is aided by the use of a cane, and this brace which he is now wearing helps to support the upper part of the body, and

to keep this girdle of bones about the pelvis together, and in that way he is able to walk more than he would without it.

Q. Is that why you have the girdle about him, to try to keep that bone together?

A. It is.

Q. What do you find to be the condition of his legs—the feeling in them?

A. He has diminished sensation over the entire surface of both legs, and in one of them,—I believe it is the right—it is entirely gone; that is, the sense of pain to pin pricks, pinching, etc.

Q. What part of his right leg is it in which you say this sense of pain is entirely gone?

A. From just below the knee down, and above the knee it is very much diminished and in places he do-sn't feel at all, even above the knee, and there is an area on the left leg where he has a total loss of sensation.

Q. In this loss of sensation, and this ability to be pained by sticking a needle or pin or anything—is his condition in that respect getting better or worse?

A. It is worse at this time than it was when I first saw him over a year ago—it is getting worse.

Q. In your judgment, doctor, from your entire examination of this man and your long treatment of him, what in your opinion is it that is causing that condition of numbness or dead-
235 ness, or paralyzed feeling in his legs?

A. Injury to the nerves at the region from which they leave the spinal column.

Q. Originating at the spinal column?

A. Yes.

Q. What in your judgment, caused that condition in and about the spinal column?

A. Some injury by external violent means.

Q. Of course you were not present at Memphis when he was hurt?

A. I was not.

Q. What do you say, doctor, as to this man's condition that is, as to this numb feeling in his legs, which increases—whether or not it is temporary or permanent?

A. It is permanent.

Q. In your opinion will he get better or worse?

A. He might remain about the same as he is now. I think the general tendency would be to progress worse.

Q. Now this condition of the sacrum, and that torn apart condition between the sacrum and the other bone—is that condition temporary or permanent?

A. That is permanent.

Q. Is there any way that the condition could be improved, by operation or otherwise?

A. There is not, other than wearing a mechanical support.

Q. Such as he is wearing now?

A. Yes.

Q. What work is this man able to do, of a physical nature?

236 A. Why nothing in the way of labor where he is compelled to use his muscular system to any extent.

Q. What tests did you make, doctor, to ascertain the condition of his legs as to this numb or paralyzed feeling?

A. Touching with my finger or a pin; having him distinguish whether it was a blunt or a sharp thing which touched him, and the use of the pin to prick the skin with.

Q. Did you ever apply the test to the sole of the feet?

A. We tested the reflexes of his feet. They are slightly exaggerated.

Q. What does an exaggerated reflex indicate, doctor?

A. It is an abnormal nerve control. There are a great many causes of it.

Q. Originating or seated where?

A. It might be from some place higher up on the nervous trunk; there are a good many places that it might be.

Q. What is the common name given to this numb feeling he has in his legs?

A. Anesthesia.

Q. Where does it originate—not all the causes, but where must it always originate?

A. It is always paralyzed or severed nerves.

Q. Located where?

A. Well, it wouldn't necessarily be located any particular place—it might be along the course of the nervous trunk, or at the terminal end of it.

Q. What do you mean by the nervous trunk?

237 A. I mean the bundle of fine nerve filaments extending from near the extremities up the spinal cord into the brain—a sort of a cable—it amounts to an electric telephone cable—a whole bundle of wires, and it is extending from the whole body to the brain.

Q. What effect would a pressure simply upon the spinal cord probably have?

A. It might cause a complete paralysis in every respect, that is, of motion, sensation, and nutrition of the parts. If it were merely a pressure without injuring the cord it would cause nervous disturbances of most any nature.

Q. What is the general condition of his nerves?

A. Good, in a general way. His nerves act well, and I guess you would say they are good, other than perhaps he is more irritable and up-set than what we would normally think him to be.

Q. Do you know anything about his appetite?

A. I do not.

Q. You didn't prescribe for that?

A. I may have, but I don't remember just now.

Q. Do you know of any way, either by medical or surgical aid, that this boy's condition would be improved?

A. I do not.

Q. Now have you made other plates, doctor, also as to the condition of this sacrum and the bones about it?

A. I have.

Q. Do they always show this opening or not?

A. No, they do not.

Q. Could you take plates, if necessary, right before this jury, some of which would show the opening, and others show it closed?

A. Yes.

238 Q. In other words, it would depend on the position of the bone, whether it was working back and forth?

A. Yes.

Q. That is the whole trouble isn't it, doctor, where it is working back and forth?

Objected to as leading—

Q. The rest of us here, Doctor, that are well—does our sacrum work back and forth to the bone and from it, or not?

A. It does not.

Cross-examination by Mr. Wells:

Q. Doctor, I believe you said you graduated in 1910?

A. I did.

Q. And became the chief of the surgical department that you mentioned, in Omaha, the same year?

A. Yes, sir.

Q. So your position as chief of the surgical department came to you before you had any experience as a practitioner?

A. It did not.

Q. Well, had you practiced before you graduated?

A. I had been assistant police surgeon during the last year of my school work, and I got that position during the latter part of the year.

Q. That was before you had obtained your certificate from the medical institution that you attended?

A. It was.

Q. That assistance that you had given in the department was before you got your certificate?

A. Yes, sir.

239 Q. I understood you to say on your qualification as an expert in this case, that you were chief of some surgical department in Omaha, and you had been five years?

A. Yes sir.

Q. And that you graduated in 1910?

A. That's right.

Q. So that would make you the chief of the department about the time you graduated?

A. No, it was in the latter part of the year I was appointed to that position.

Q. The latter part of the same year you graduated?

A. Yes sir.

Q. You have only had five years experience in practice?

A. That is all.

Q. I will ask you to state if it is not a fact that an x-ray photograph, just like the one you have there and presented to the jury,

can be taken and made to show just exactly what that photograph shows, of a perfectly normal man, that never had any injury to him at all?

A. I would say it is not possible.

Q. Not possible?

A. Yes sir.

Q. Then I understand you further to say, that a photograph taken of this man in all most any position where the rays would have access to the sacrum and the bones that are attached, would show the injury that he has?

A. No it would not.

Q. Well, if this man in his present condition was taken out for the purpose of ascertaining the nature and character of his injury, and photographing it, would there be any trouble about the discovering of it by an x-ray photograph man?

A. If the man was properly placed so as to show the condition it would show now.

Q. Well, if a competent disinterested physician, selected for that purpose would undertake to photograph him with a view to finding that out, would there be any trouble about doing it?

A. No, they could do it.

Q. In other words—I will ask you this question; if it be true that competent and disinterested physicians and operators of the x-ray machines this morning undertook to photograph his present condition, with a view to ascertain what the situation is, would they have any trouble in doing so?

A. I wouldn't think so.

Q. Then a photograph taken now, under present conditions, with a view of ascertaining that, and taken intelligently would develop it, would it?

A. It would if it were a proper position.

Q. Have you got an x-ray photograph of this man with that position of his body taken with the x-ray machine directly in front of him—that is to say, in the perpendicular position, and at no angle at all?

A. I have.

Q. Have you got that with you?

A. I have it here in town, yes.

Q. What does that show?

A. Well, I don't know whether it shows any deformity in particular or not.

Q. Does it show the tearing loose of this joint referred to by counsel in his examination?

A. If it does show it, it doesn't show it very well.

Q. Why?

A. Because the man is not turned properly. The same way if I take a picture of my fingers that way (showing) you can't see the crack between them.

Q. These bones join on the sacrum at the back of a man's body?

A. They do.

Q. If you take the photograph directly in front, why won't the separation show?

A. Because the separation does not go directly forward and back-wards—it slants?

Q. If it is a separation it is a separation that would let the rays of the light through and make a dark shadow?

A. If you get along the crack it will.

Q. What is there between the front of the man and this crack what is there to prevent the photograph showing it?

A. A bone.

Q. What bone?

A. The sacrum and the os innominatum overlap each other.

Q. You can't take then a photograph unless you take it at what angle, to get it correct?

A. Well, it shows best tilted a little bit to one side.

Q. Will it show in a photograph taken directly in front of him?

242 A. I think it will. There is another element. It might be that the hip bones pressed together would obscure that somewhat.

Q. I don't mean if somebody had hold of him pressing him together; I mean if every brace was taken off and a photograph taken with a view of ascertaining his then condition—pressing nothing—no brace or anything else?

A. Well, his position and his weight might be relaxed so as to fall together somewhat, but I think it would show in a relaxed condition.

Q. Now if disinterested physicans were sent out to make an examination of that kind they wouldn't be apt to put him in a position where it wouldn't show, would they?

Objected to; Objection sustained.

Q. Well, if physicans went out with a view to ascertaining it, and took off everything and out him on the table without any brace of any kind, and took a photograph of him, would it show?

A. If they got him in the right position. In order to get that they would have to spend sometime in getting the history of the case, and without having this history they would have to take quite a number of pictures, as I did in order to get one to show correct.

Q. If you are going to get a photograph, you don't have to have the history to have a photograph—if you are looking a man in the face you wouldn't have to ask him which side of his head his face was on?

A. No sir.

Q. If you knew where the sacrum and the bone joined
243 together you wouldn't have to have the history to know that—you would know that from the history of anatomy?

A. If there was a crack and you couldn't see it with your naked eye, you would have to make several trials before you could hit it.

Q. You wouldn't have to get him to tell you where the crack was before you could see it?

A. No, I don't think he would know there was a crack there of course.

Q. Doctor, you were present at the time not very long ago when there was a physical examination of this man made in your presence and as his representative?

A. I was.

Q. Who was there taking part in that examination?

A. Dr. Lord and Dr. Sommers, and Miss Nations, and Dr. Stevens and Mr. Copp.

Q. Who else?

A. Myself.

Q. Who else?

A. Mr. George Williams.

Q. Well, they were examining him?

A. Yes sir.

Q. Was Dr. John W. Hall there?

A. Yes sir.

Q. Did you mean Dr. Stevens or Dr. Hall?

A. No.

Q. Was there a Dr. Stevens there?

A. He was.

Q. Who was he?

244 A. And an assistant of Dr. Lord, or affiliated with him. I think he made some blood test or something.

Q. I hadn't heard his name. Dr. John W. Hall is a physician from Chicago is he not?

A. I understand he is.

Q. Who is Dr. Lord?

A. He is a surgeon of Omaha.

Q. How long has he lived in Omaha?

A. I suppose about twenty years—I don't know for sure.

Q. About how old a man is he?—give us your best judgment?

A. Well, I suppose he is close to 60—I don't know certainly.

Q. He is a man advanced in years to that extent?

A. Yes.

Q. How long has he been in Omaha practicing medicine there?

A. I don't know.

Q. Is he an eminent surgeon or not?

A. He is.

Q. A man of high character and reputation, is he not?

A. He is.

Q. And lives in the same city that you do?

A. He does.

Q. Who is Dr. Sommers?

A. He is another surgeon there.

Q. How long has Dr. Sommers been living there, about how old a man is he?

A. He is about the same age I suppose. He has been living there for some time, longer than Dr. Lord.

Q. He is a man of high standing and character in that City is he not, as a physician?

245

A. He is.

Q. Lived there for many years?

A. Yes.

Q. Has Dr. Sommers any connection with the Illinois Central Railroad Company?

A. Not that I know of.

Q. He is independent of them?

A. Yes.

Q. Dr. Lord, I believe is surgeon for the Railroad there?

A. I understand that he is.

Q. Were you present at the time when they made this physical examination of this man?

A. I was.

Q. And you saw them make that examination?

A. I did.

Q. Was it a critical and careful examination?

A. Very much so it was.

Q. Properly made?

A. Yes.

Q. And was it made according to your idea of how an examination should be made to ascertain all the facts?

A. With the exception of the method in which they took the X-rays.

Q. In what particular was that wrong?

A. They insisted on taking, or wanted to take the picture straight, anterior, posterior; that is, right straight back—straight through. They didn't consider any side views.

Q. Your idea was that was not the proper way to make that?

246 * A. No, I didn't say that.

Q. What was wrong?

A. I said they might have found out more than they did if they had done that.

Q. That wasn't the proper way to take it then?

A. That was the proper way to take, but it didn't show the condition another angle would; it didn't show it as well, I will say.

Q. Did you see the result of the photograph they took there?

A. I saw them when they were still under the process of developing. They were not easily viewed at that time, and they were making an examination and I didn't pay much attention to them.

Q. Why; you were there as the representative of this man?

A. Yes.

Q. Taking part in it?

A. I say the plates were under process of development and I didn't want to take the time to keep them out of the solution more than necessary. I knew what the plates showed without looking at them.

Q. I suppose you don't know what the results were of that photograph process?

A. No sir, I don't know the result of any of their examinations at all, except I was able to draw my own conclusions as they were going along.

Q. You knew nothing about it, except to be there and see that it was made; but you know that was a careful and critical examination made by those gentleman that you mentioned?

247 A. They went over him very thoroughly.

Q. It was your understanding that those were men who were appointed for the purpose, and went there, and you accompanied them for the purpose of having an examination made?

A. I was asked to be present at the time the examination was made.

Q. In view of the fact that he was your patient?

A. Yes sir.

Q. You were to be there to see just what was done?

A. Yes.

Q. I will ask you, Doctor, to please, in your own way, and in a way which will be understood by your brethren of the same profession, to give me what your diagnosis is of this man's present condition, and let the stenographer take it down—the diagnosis that you now give of his present condition?

A. He has a nervous disturbance due to trauma, and from an external violent means and the deformity of the pelvis.

Q. Is that the end of it?

A. Yes sir.

Q. As I understand, that is your diagnosis of his present condition?

A. Yes sir.

Q. And that is a full diagnosis, so far as it goes?

A. Yes sir.

Redirect examination by Mr. Harrington:

Q. Were you in Jackson this morning when these other doctors made those X-rays?

A. I was not.

248 Q. And of course you don't know whether the young man who took it understood the position you would have to place the man in in order to get the real truth in this case?

A. I do not.

Q. You don't know whether he just laid him down on the table flat and whether the parts came together?

A. I don't know anything about it—I don't know any was taken.

Q. When did you reach Jackson?

A. On the 3.45 train this evening.

Recross-examination by Mr. Wells:

Q. You don't know Dr. Liddle of this City do you?

A. I don't think I have ever met him.

Q. He is a practitioner who makes a specialty of the X-ray business; you don't know that he is in any way incompetent?

A. I do not.

Q. You wouldn't undertake to say that he is?

A. No sir.

Q. Nor can you undertake to say that he didn't take these photographs properly when they were taken this morning could you?

A. No sir, I don't know.

Q. A man who makes a specialty of taking X-ray photographs and is qualified and fitted for it would know how to so it wouldn't he?

A. Yes.

249 Redirect examination by Mr. Watkins:

Q. However qualified a man might be, and how ever good faith could he get the results unless he had the man in the proper position?

A. No sir.

Q. Would his qualifications or good faith have any thing to do with the failure to get it?

A. It would not.

(Witness Excused.)

The plaintiffs rests.

250 Mr. L. P. GIBSON, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. Where do you live?

A. Des Moines, Iowa.

Q. What connection, if any have you with the Rock Island Railroad Company?

A. I am claim adjuster.

Q. How long have you occupied that position?

A. For the past 7 years.

Q. Are you acquainted with George R. Williams, the plaintiff in this suit?

A. Yes, sir.

Q. When did you become acquainted with him?

A. It was in March or April, 1912.

Q. What was the occasion of your becoming acquainted with him?

A. It was in connection with an injury he received near Cedar Rapids on March 22.

Q. March 22, 1912?

A. Yes, sir.

Q. And what was the nature and extent of his injury?

A. He complained of an injury to his back.

Q. Was that on the Rock Island Railroad?

A. Yes, sir.

Q. How did the injury occur, according to his claim?

251 A. He claimed that while working with the brake of a coal car that the brake wheel pulled off and he fell backwards to the ground.

Q. I understood you to say this was an injury to his back

he was afflicted with at that time when you became acquainted with him?

A. Yes, sir.

Q. What became of him during the period of time when he was injured, up to the last time you knew of him?

A. He remained in the hospital at Cedar Rapids for 17 days following the accident, then he was out of the hospital 7 days, and then he returned to the hospital and spent 15 days longer.

Q. Did you make any adjustment with him of the matter, as between him and the railroad company, on account of this injury?

A. Yes, sir.

Q. At the time of making the adjustment that you did make, or settlement with him on that score, what was the nature and what was the extent of his injury at that time?

A. He still complained of having a lame back, and he was up walking around. He came to my office in Cedar Rapids at the time I made the adjustment with him.

Q. Well, had he recovered from the injury to his back at that time.

A. He claimed he had not entirely recovered.

Q. Well, you settled with him, did you?

A. Yes, sir.

Q. Did you see him any more after that?

A. No, sir, not to my recollection.

Cross-examination by Mr. Watkins:

252 Q. Where did you say he was injured?

A. I said near Cedar Rapids, but it was really near Nichols, Iowa.

Q. How far is that from Cedar Rapids?

A. About 30 miles.

Q. You were then in the claim department of the Rock Island?

A. Yes, sir.

Q. And have been at all times since?

A. Yes, sir.

Q. Did you take any written statement from him as to what he was suffering from?

A. No, sir, I believe not.

Q. Did you take any written statement at all?

A. No, sir.

Q. You have of course, Mr. Gibson, in the mean time adjusted a great many claims, have you not?

A. Yes, sir.

Q. You say your recollection is he first went to the hospital and stayed 17 days?

A. Yes, sir.

Q. What hospital?

A. St. Lukes Hospital at Cedar Rapids.

Q. He was absent 7 days and came back there?

A. Yes, sir.

Q. Isn't it a fact, Mr. Gibson, that the doctors in the hospital treated him for what they thought was a rupture?

A. No, sir, I don't know anything about that.

Q. Who were the doctors that treated him?

A. Do. Ristine and Dr. Rummell of Cedar Rapids.

253 Q. Were you here at the last term of court?

A. Yes, sir.

Q. Were these two doctors here?

A. Dr. Ristine was here.

Q. He was one of the doctors that treated him?

A. Yes, sir.

Q. Is he here this time?

A. No, sir.

Q. Will you deny that Dr. Ristine treated him, or one of the doctors treated him, for what was supposed to be rupture and which they found was not rupture?

A. I don't know.

Q. You wouldn't undertake to say about that?

A. No, sir.

Q. Would you deny when he went back to the hospital the second time, that on account of the exposure from leaving the hospital the first time he contracted influenza, and the second time he went to the hospital he was treated for influenza?

A. I don't know as to that.

Q. You couldn't deny that, could you?

A. No, sir.

— In going to the hospital they would take him on a sort of stretcher wouldn't they?

A. I didn't see it.

Q. You don't know whether, when he went back the second time, whether he was treated for influenza entirely?

A. No, sir.

254 Q. It was after his second trip to the hospital that he saw you, was it?

A. Yes, sir.

Q. After his second visit, and arter he had been discharged by the doctors?

A. Yes, sir.

Q. Do you know whether at the time he was there being treated, that he not only didn't use a cane or crutch, but had perfect use of the lower limbs of his body?

A. Well, he complained of having some lameness in his back.

Q. I will ask you if at all times he didn't have perfect use of his body and lower limbs, so far as you know?

A. So far as I knew.

Q. Isn't it a fact that you probably misunderstood him in regard to his injury?

A. No, sir.

Q. You made no written notation at the time?

A. Yes, sir.

Q. Have you got that written notation?

A. Yes, sir.

Q. Did you take any written statement from him?

A. No, sir.

Q. You are unable to say what he was treated for the second time he went to the hospital?

A. I couldn't say.

Q. Would you deny that the second time he was in the hospital that he helped a very heavy patient to get in and out of the bed, and had perfect control of the lower part of his limbs?

A. I couldn't say.

255 Q. You went to see him about a settlement, didn't you?

A. I believe I saw him once in the hospital.

Q. You went to get a statement from him as to his injury, as it was your duty to do?

A. I think I saw him in the hospital.

Q. In other words, you heard there was a man injured, and it was your duty to go and find out the extent of his injury and settle with him?

A. Yes, sir.

Q. Isn't it a fact that you told him when he got well and up to come to your office?

A. I don't recall that.

Q. I will ask you if it is not a fact that he came to your office in response to the invitation extended by a young man named Hanson, who was in your employ?

A. I don't recall Hanson.

Q. Did you have a young man named Hanson in your employ?

A. I might have—I don't recollect.

Q. You couldn't deny that?

A. I couldn't.

Q. You can't say that he didn't come to your office in response to the invitation of a young man named Hanson?

A. I don't recollect.

Q. He did come to your office in response to some kind of an invitation, didn't he?

A. He might have come on his own accord.

Q. You either sent word to him by somebody, or left word at the hospital, or told him when he got up to come and see you?

256 A. I don't recollect.

Q. The natural disposition of the Rock Island road, and you as claim agent, would be to settle a small claim?

A. Yes, sir.

Q. I will ask you if it is not a fact that he never put in a claim, but you told him to come to the claim agent's office, and when he got well he came to your office?

A. He came to my office, but I don't recollect the circumstances.

Q. You have handled a great many claims?

A. Yes, sir.

Q. How many hundred claims have you handled since that time?

A. I have no idea.

Q. He was not walking with a cane, or hurt, when he came to your office, was he?

A. I don't remember as to that.

Q. The truth about it is you gave it the most casual attention?

A. I made the settlement.

Q. I will ask you if you didn't offer to pay him \$200.00, and if that wasn't based upon his lost time practically?

A. His lost time was about 8 weeks, I believe.

Q. You fixed his compensation yourself, based upon what he would have probably earned within that period?

A. Just about the period he would have been laid off, according to what he thought himself.

Q. He took it and was satisfied?

A. He seemed to be.

Q. As a matter of fact the amount of money accepted by
257 him and paid by you, was suggested by you?

A. I have the recollection that he asked me for \$400.00.

Q. You paid him for 8 weeks' time?

A. Paid him 8 weeks.

Q. The offer of \$200.00 was based upon straight time, or time he would have actually lost, or would lose for the estimated time?

A. Approximately.

Q. It would probably be a few days even then before he could go back to work?

A. It covered a period of about three weeks' additional time he thought he would be laid up.

Q. And based upon what he thought he would earn between those dates?

A. Between the time he was injured and the time he thought he would go to work.

Q. It was the custom of that road, without regard to the liability, to pay a man injured in the service of the company for the lost time?

A. Not quite our custom.

Q. But it was frequently done?

A. Not in cases where we thought there was no liability.

Q. You thought there was some liability?

A. Yes, sir.

Q. And settled with him accordingly?

A. Yes, sir.

Q. And you never say him since?

A. No, sir, except last October.

Q. You were down here last October?

258 A. Yes, sir.

Q. What was this doctor's name, that you called just now?

A. Ristine.

Q. Where does he live?

A. Cedar Rapids.

Q. Still living there?

—, —.

Redirect examination by Mr. Wells:

Q. His claim of injury was an injury to his back, I understood you to say?

A. Yes, sir.

(Witness excused.)

259 Dr. A. W. RUDISILL, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. Where do you live?

A. Memphis.

Q. How long have you lived there, doctor?

A. About 28 years.

Q. What connection have you, if any, with the Illinois Central and Yazoo & Mississippi Valley Railroads at that place?

A. District Surgeon.

Q. Were you occupying that relation to those companies in the year 1913?

A. Yes, sir.

Q. Do you know the plaintiff in this case, George R. Williams?

A. Yes, sir.

Q. When did you first become acquainted with him?

A. I am not sure; I think I examined him for entrance into the service, a few weeks before that.

Q. Did you have any occasion to attend him at any time when he was alleged to have sustained some injury of any kind?

A. Yes, sir.

Q. Just state, please, your connection with that matter.

A. I was called to see Mr. Williams in the yards of the Y. & M. V. R. R. at Memphis, and we found him at the time in what is called a shanty—one of the small buildings in the yard.

260 Q. Just state now, fully, what connection you had, what you found, and all about it.

A. I found Mr. Williams lying there, apparently unable to speak—at least he didn't answer my questions. I asked him what his trouble was, what hurt him, and he made no answer, but seemed to place his hand over his chest. On a cursory examination there in the yard I found no evidence of any injury. I didn't strip him entirely, but I turned him over to see if I could find any evidences of an injury, and found none, and gave him a hypodermic and sent him to the hospital.

Q. To what hospital did you send him?

A. St. Joseph's Hospital.

Q. Did you go with him to the hospital?

A. No, sir.

Q. In whose charge was he sent, and how?

A. Sent in an ambulance. He would come under the direction of Dr. Malone when he got to the hospital; he does the hospital work for the I. C. at that point.

Q. Who is Dr. Malone—how long has he lived in Memphis?

A. I don't know exactly—I think he has been practicing there 12 or 14 years.

Q. What is his relation to the railroad company?

A. He is Division Surgeon. He has charge of the surgical work for the I. C. and Y. & M. V. at Memphis, and for quite a territory north and south.

Q. He has charge of the patients when they are sent to the hospital?

A. Yes, sir.

Q. Your duty ended after you examined the man on the ground and put him in the ambulance?

261 A. I am supposed to give them first aid and see that they get to the hospital.

Q. About what time of day was that?

A. I think somewhere near 9 o'clock in the -vening.

Q. What did you find his condition to be?

A. I found him with a very rapid pulse and breathing; no other objective evidence of any injury. That is, from his general condition. I regarded it as a case of acute indigestion.

Q. Did you see any objective symptoms of injury of any kind?

A. None at all.

Q. Any evidences of a shock of any kind?

A. No evidences of a shock. His pulse was very rapid and his breathing was quite rapid—that would be more from a stimulation than a shock.

Q. I believe you said you didn't take his clothes off?

A. No sir, I didn't strip him.

Q. To what extent did you make an examination?

A. I pulled up his shirt and pulled down his trousers as much as possible, and pulled up his shirt, and placed my hand under his clothing, feeling the bony prominences.

Cross-examination by Mr. Watkins:

Q. Now long have you lived in Memphis, doctor?

A. Nearly 28 years.

Q. Raised in Tennessee?

A. No, sir, I am from Missouri.

Q. You work at come hospital in Memphis?

262 A. I have no hospital connections at all—I treat patients at the hospitals.

Q. You are an employee of the I. C. and Y. & M. V. R. *Railroad* companies?

A. Yes, sir.

Q. Which do you work for?

A. Both of them.

Q. I understood you to say when this young man started to work, you then made a physical examination of him?

A. I think so.

Q. Do you recollect doing so?

A. I don't remember.

Q. Why did you say you did?

A. I usually examine all employees for the Y. & M. V. R. R.

Q. He was an employee of the Y. & M. V. R. R. at that time?

A. Switchman, yes, sir.

Q. And if you examined him you found him in a normal condition?

A. Yes, sir.

Q. Otherwise you wouldn't have permitted him to go to work, would you?

A. No, sir.

Q. What kind of an examination do you usually give these employees—pretty thorough?

A. A fairly thorough examination, yes, sir.

Q. Do you make them strip?

A. Not entirely, just lower the trousers to the knees, and take off the coat and vest.

Q. If you did examine this young man you found him in
263 a sound condition, and you must have done so?

A. Yes, sir.

Q. The next time you say you heard of him was on the 15th of March, when you were notified that somebody was injured in the south Memphis yards?

A. I found him in response to a call. I probably had seen him during the time; he boarded not far from my residence.

Q. You were informed that he was injured?

A. I was called to see some injured man—I didn't know who it was.

Q. Where did you say you found this body at the time you got there?

A. At what they call the car knocker's shanty.

Q. Right about Iowa Avenue?

A. Yes, sir.

Q. Wasn't it right about where track 21 came out to that building?

A. I don't know the tracks by number.

Q. It was the westmost of those side tracks?

A. I think the shanty is west of all the tracks.

Q. There is a perfect mesh of tracks down there?

A. Yes.

Q. How did you go there?

A. I went to Iowa Avenue and walked up.

Q. Did you go on a car?

A. No, sir, automobile is all.

Q. How about your vehicle that you convey wounded people in?

A. That got there soon after I got there.

Q. Where did you find him, in the house or outside?
264

A. If I remember, just outside.

Q. He was apparently unconscious?

A. Yes, sir, he made no response to questions.

Q. He was evidently in an abnormal condition?

A. Yes, sir.

Q. He was not normal, was he?

A. No, sir.

Q. What did you do in order to revive him?

A. Gave him a hypodermic of morphine and stropin.

Q. Was that calculated to restore him to consciousness?

A. Yes, sir.

Q. And it had no effect?

A. I didn't stay long enough to see that effect.

Q. I will ask if the boys in the yard didn't rub him and pour water in his face, and open his eyes, and do everything to bring him back to life?

A. I didn't see that.

Q. It wasn't done in your presence?

A. No, sir.

Q. Anyway, you delivered him to the ambulance, to be delivered at the hospital, in that same condition?

A. Yes, sir.

Q. Then your duties were through?

A. Yes, sir.

Q. You didn't strip him?

A. No, sir.

Q. You didn't notice whether or not there was a black spot about the size of a dollar around his spinal column or back bone?

265 A. Yes, sir, I noticed there was no evidence at all of any injury.

Q. Did you look on his back?

A. Yes, sir.

Q. All up and down his back?

A. Yes, sir.

Q. Did you see evidences of anything?

A. Not at all.

Q. It might have possibly been there without your seeing it?

A. Not any large black spot.

Q. Was there a lamp where you were?

A. Lanterns were there.

Q. You gave him no critical examination?

A. No, sir, no thorough examination.

Q. That is all you know about it, is it?

A. Yes, sir.

Q. What was the action of his heart—rapid, you say?

A. Yes, sir.

Q. And his pulse—breathing heavy?

A. Breathing very rapid.

Q. What did you give him a stimulant for then?

A. On the theory that he was having indigestion.

Q. Would that have a tendency to increase his heart action?

A. No, sir, it would have a tendency to quiet it.

(Witness excused.)

266 Dr. BATTLE MALONE, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. Where do you live?

A. Memphis.

Q. How long have you lived there?

A. Nearly 30 years.

Q. What is your profession?

A. Surgeon.

Q. Where did you receive your surgical education?

A. Memphis Hospital Medical College.

Q. You are a graduate of a regular medical college?

A. Yes, sir.

Q. How long have you been engaged in the practice of your profession at Memphis?

A. Since the 1st of January, 1900.

Q. What relationship, if any, have you with the I. C. and Y. & M. V. railroad companies at Memphis?

A. Division Surgeon.

Q. And where do you perform your duties principally?

A. In the hospitals of Memphis, St. Joseph's and the city hospitals.

Q. What is St. Joseph's Hospital; is that an institution that is controlled by the railroad companies, or who?

A. No, sir, it is what is ordinarily known as a sisters' Hospital. The nurses are sisters of St. Francis—the Catholic sisters own it and operate it.

Q. What has the I. C. and Y. & M. V. railroad companies to do with it. Have they got some wards there?

A. Yes, sir, we have an arrangement with the hospital whereby they take care of our white patients.

Q. I was just trying to get at the point why a man was carried to that hospital. As I understand you, that is the hospital which the two roads patronize in that way?

A. Yes, sir.

Q. Are you connected with that institution?

A. Yes, sir, I am surgeon on the staff at the hospital.

Q. Doctor, do you know Mr. George R. Williams, the plaintiff in this case?

A. Yes, sir.

Q. When did you become acquainted with him?

A. In March—I have forgotten the exact date. Can I refer to my record for the date?

Q. You can refer to it—March 15th is the time the man was carried to the hospital.

A. Well, that is the time I saw him.

Q. Well, the time you have reference to is the time George R. Williams was carried to that Hospital?

A. Yes, sir.

Q. Doctor, were you there at the time when he was brought there?

A. No, sir.

Q. How soon did you see him after he got there?

A. My recollection is that I saw him next morning.

Q. Did you make any examination of him?

A. Yes, sir.

Q. What sort of an examination did you make?

268 A. I examined his body principally.

Q. Entirely stripped?

A. Well, he was in the bed; I pulled the bed clothes down and pulled his clothing up and examined his person.

Q. What did you find his physical condition to be—state in full,

without any further questions from me, all you know about it, and what you found?

A. I found no external evidence of injury—nothing that I could see myself. His complaint was of paid in his back—that was the only thing that was noticeable, is what he said—

Q. Did you see any marks or bruises of any kind on his back or anywhere on his body?

A. No, sir, I did not.

Q. Did you make a sufficiently critical examination to ascertain whether or not those bruises were on him?

A. Yes, sir.

Q. Were there *are* bruises on his body?

A. I found none.

Q. What was his general condition in other respects, as far as you could ascertain?

A. As I say, the only thing he complained of, to the best of my recollection, he was complaining of paid in his back.

Q. What treatment, if any, did you give him, and for what length of time?

A. We used hot applications and liniments to his back. He stayed in the hospital I think a week or 10 days. I saw him no more after he left the hospital.

Q. Did you see him during the period of time he was at
269 the hospital?

A. Yes, sir, at my daily rounds in the hospital, I always visit the patients.

Q. Do you know anything about the occasion of his leaving the hospital—why he left?

A. No, sir, I do not; I was told that he had left—he wanted to go and left of his own accord, and I didn't pursue the subject.

Q. During the period of time he was there what was his general condition—what did you find his condition to be; state as fully as you can recall?

A. That is the only symptom complained of, the paid in his back, which he said was sufficient to make him want to lie quiet—he suffered when he moved it pained him all the time, but especially when he made any effort to move. That is the only symptom I recall at all.

Q. Do you know anything about whether he suffered with anesthesia of the lower limbs or not while he was there?

A. No, sir, nothing of that kind was ever called to my attention.

Q. Did you make any tests in the way of pin pricks, and all that sort of thing, to ascertain whether or not he had any feeling in his legs?

A. No, sir, I did not.

Q. What use of himself did he have of his limbs and arms and muscles generally, while he was there; could he handle himself?

A. He handled himself, but expressed the sensation of pain when he would move, especially when he moved his legs, he said
270 it caused pain in his back.

Q. During the period of time he was at the hospital, did

you ever discover any objective evidence of any injury to his back at all, by way of a bruise or spot, or anything on his back?

A. No, sir.

Q. Did you find any abnormality of any kind in his muscles or bones or limbs at all, while he was there?

A. I didn't make any x-ray picture.

Q. I mean from the other examinations?

A. I did not, from the other examinations I made.

Q. You say he voluntarily left the hospital without your knowledge?

A. Yes, sir.

Q. He went away—you found he was gone?

A. Yes, sir.

Q. That is all you know about it?

A. Yes, sir.

Cross-examination by Mr. Watkins:

Q. Doctor, you say you have been in Memphis 18 or 20 years?

A. I have been in Memphis longer than that.

Q. Are you a married or single man?

A. Married.

Q. You are division counsel for these railroads?

A. No, sir, division surgeon—

By Mr. Wells:

Q. Doctor, there is one question I failed to ask you—I will ask you now as to the condition of the man in his physical functions of his body while he was there—do you know whether or not he had
271 control of his bowels and bladder and urinary parts of his body while he was there?

A. I didn't have my attention called to anything abnormal.

Q. It never was called to your attention during the whole time he was there?

A. No, sir.

By Mr. Watkins:

Q. How long had you been treating patients at this hospital, doctor?

A. Well, I was in a way raised up in the hospital, from the time I started to study medicine.

Q. That particular hospital?

A. Yes, sir.

Q. I believe these railroad companies have wards in that hospital?

A. They have a ward known as the I. C. ward.

Q. And all the I. C. and Y. & M. V. employees are sent there?

A. Most of them, not all.

Q. Sometimes it won't hold them all—you kill and hurt so many the ward won't hold them?

A. Yes, sir.

Q. That ward, I believe, is supported, isn't it, by contributions from the boys who work for the railroads?

A. No, sir, the ward is not supported at all. We pay so much a day for each one in the ward.

Q. Don't the employees of the railroad company contribute something out of their salary for the maintenance of that ward?

272 A. No, sir, they pay when they are sick, so much a month for the privilege of being waited on when they are sick. When they are hurt, the company takes care of them.

Q. This young man appears to have been brought there on the night of the 15th of March, between 9 and 10 o'clock—who treated him at the hospital?

A. I don't know—I suppose the house surgeon saw him.

Q. Who was the house surgeon?

A. I don't remember at this time.

Q. You didn't see him that night?

A. No, sir, my recollection is I saw him the next morning.

Q. Is it your duty, as division surgeon, to see all injured employees and treat them?

A. No, sir, not all—all in the hospital.

Q. In pursuance of that duty you visited this man?

A. Yes, sir.

Q. You had not expected him when he was brought to the hospital the night before?

A. No, sir, I didn't see him till he got to the hospital.

Q. You didn't see him the night he was brought there?

A. No, sir, the next morning.

Q. Isn't it a fact that you were there the night he was brought there, and he was examined by you—he was sent by Dr. Rudisill, and you were there when he got in?

A. That isn't my recollection.

Q. Might your recollection be at fault in regard to that?

A. Oh, yes, it is not infallible.

Q. Isn't it a fact, since you refresh your memory, that a man by the name of Earle came with him, he was there, and you
273 examined him the night he came to the hospital?

A. I don't remember.

Q. Isn't it a fact that you examined him, and he came to himself, and he told Earle how he got hurt, and if he would go to a certain track and look at a certain box car, they would find a box car—did you hear such a conversation?

A. I don't remember.

Q. How many patients were in that ward?

A. I don't remember.

Q. Wuite a number?

A. 6 beds in there—it is seldom that all the beds are occupied.

Q. And your best recollection is you didn't see him the night before?

A. I have no recollection at all.

Q. You have no recollection that he was brought there, and couldn't say that he was brought there unconscious?

A. No, sir.

Q. You couldn't say he was not restored to consciousness until some time after he got there?

A. No, sir.

Q. You say the next day when you saw him—was he bandaged up; wasn't a sheet or something wrapped around his back?

A. Not to my recollection.

Q. Are you sure about that?

A. That is my recollection.

Q. He was, however, suffering from pain—complaining of pain?

A. Yes, sir.

274 Q. Was there anything abnormal about his pulse or heart?

A. Practically normal.

Q. Any evidence of any shock?

A. No, sir.

Q. He was not exactly normal, was he?

A. My recollection is that he was.

Q. Quite normal?

A. Quite normal.

Q. He was complaining, however, of this pain?

A. Yes, sir.

Q. He told you his back hurt?

A. Yes, sir.

Q. You say you make no x-ray?

A. No, sir.

Q. What did you do?

A. Applied hot applications to his back.

Q. That is the only thing you did?

A. Yes, sir.

Q. He stayed about 10 days and went away?

A. Yes, sir.

Q. The only way to have found out if he had an injury to his spinal column, or an injury to his hips—an x-ray would have revealed that?

A. Well, there are other ways to find an injury to the back or joints besides an x-ray.

Q. That would be the most sure way?

A. If there was any doubt of him having such trouble, why you usually resort to the x-ray.

275 Q. You wouldn't undertake to say this young man was not injured?

A. I say he complained of pain in his back.

Q. You wouldn't pretend to say he was not injured and was not brought to that hospital unconscious, would you?

A. No, sir.

Q. Do you recollect ever having stuck pins in him to see whether or not the lower portion of his body had any feeling in it?

A. No, sir.

Q. You just have no recollection about it—you might have done it?

A. I don't think I did.

Q. You wouldn't say positively that you did not, would you?

- A. No, I don't like to say positively, but I don't think I did.
- Q. Do you know Dr. Duval?
- A. Yes, sir.
- Q. Where does he practice?
- A. Memphis.
- Q. How long has he practiced there?
- A. I couldn't say.
- Q. Do you know him personally?
- A. Slightly.
- Q. Is he regarded as a reputable physician in Memphis?
- A. I suppose so; I know very little about him.
- Q. So far as you know then, he is?
- A. Yes.
- Q. As a matter of fact, didn't he stay three weeks in that hospital?
- 276 A. I have my record there. If you will allow me to refer to it.
- Q. Have you got the hospital record or your own record?
- A. My own record.
- Q. Have you got the hospital record of how long he actually stayed there?
- A. I have a note in there taken from our own record——
- Q. What nurse waited on him while he was in the hospital?
- A. I sister named Sister Caroline.
- Q. What is the record you have there—is that your own record or the hospital record?
- A. This is a copy of my own record—it is not the original——
- By Mr. Watkins: We object to it, if the court please.
- By the Court: He can use it to refresh his memory.
- Q. What is the date of it, that you first saw him—on that record?
- What was the first time you ever saw him?
- A. This was made out on 3/15, dated 3/16—it was made out that the injury occurred on 3/15.
- Q. When was the first time you saw him, according to that record?
- A. The record was made on the 16th.
- Q. That would be the first day you saw him?
- A. Yes, sir.
- Q. What does that show as to when he left the hospital?
- A. This doesn't show. I had it on the original—Mr. Sharp has it there; my original record has it on it, (looking at record handed him by Mr. Sharp). He left the hospital on the 2nd day of April.
- 277 Q. How long would that be?
- A. From the 15th of March to the 2nd of April.
- Q. That is nearly three weeks, isn't it?
- A. A little over two weeks.
- Q. They — it was more than 10 days—you were speaking from recollection?
- A. Yes, sir.
- Q. To refresh you again, I want to ask you if it is not true that you came in and examined him the night he was injured, and the

next morning at half past 10 you came back in that room and sat down at the table and made out your report of his accident?

A. I have expressed myself as truthfully as I can, that my recollection is that I saw him first the next morning.

Q. You are merely giving the jury the benefit of your best recollection?

A. Yes, sir.

(Witness excused.)

(Court here adjourned till 9 o'clock tomorrow, at which time court convened, and the following testimony was taken:)

278

WEDNESDAY, February 24, 1915.

Dr. J. E. SUMMERS, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. Where do you live, doctor?

A. Omaha.

Q. How long have you lived there?

A. I have practiced surgery there since '85.

Q. Are you a regular graduate surgeon from any medical college?

A. Yes, sir.

Q. What college?

A. Columbia University, New York.

Q. I understood you to say you have been practicing surgery at Omaha since 1885?

A. Yes, sir.

Q. Are you acquainted with the plaintiff in this case, Mr. George R. Williams?

A. Yes, sir.

Q. When did you form his acquaintance?

A. Last November, I think it was—I don't remember the exact date.

Q. What was the occasion of your having seen him, and where did you see him?

A. I was asked to examine him, and saw him in Dr. Lord's office in Omaha.

Q. Who was present at the time you made that examination, besides yourself?

279 A. Dr. Hall of Chicago, Dr. Lord and myself, and I think Dr. Harris.

Q. Dr. Harris was there?

A. Yes, sir.

Q. Doctor, I will ask you to describe, in a general way, some of the structures of the human body, and some of the symptoms of it—when you are making a physical examination of a man, I know the physicians and surgeons use some words that all of us don't understand thoroughly, and I will have to ask you to explain them for our information. Among the other expressions that I hear used, in the description of symptoms that are found—they say symptoms are

subjective or objective; will you please explain to the jury what is the difference between those kind of symptoms? What is a subjective symptom?

A. Subjective symptoms are those that are under the control of the patient; that is, he does everything by his own volition, or where the senses come into play; and objective symptoms are those you can observe by inspection and examination.

Q. That then is the distinction, and that is what is meant by physicians when they use those expressions?

A. Yes, sir.

Q. Now, objective symptoms, as I understand, are those that are there, ever present, and can be discovered by an examination?

A. Yes, sir.

Q. Subjective symptoms are those that are subject to the will of the patient, or the man who is being examined?

280 A. Yes, sir.

Q. Can objective symptoms be feigned?

A. No.

Q. Can subjective symptoms be feigned?

A. Yes, sir.

Q. I will ask you, doctor, to state to what extent you made a physical examination of this man at the time; whether a critical examination, or a cursory one, or to what extent did your examination go?

A. A very careful examination was made of him. Dr. Hall made most of the examination. We were present and saw everything he did; heard all the questions he asked, and corroborated some of the findings, and the man was stripped, a painstaking, careful examination made.

Q. Then state to the jury, doctor, what the result of that physical examination was?

A. Physically, there was nothing wrong with the man—we could discover nothing wrong physically.

Q. What was the matter with him, just in a general way. I am not a physician and can't ask you the questions in a technical way. We want to know the facts just as you found them?

A. A careful examination of his body showed that to be the body of a normal man. He had one symptom,—the only one that made an impression upon me at all—and that was a subjective symptom of anesthesia, or you could prick his skin of the extremities with a pin and he showed no reflex symptoms—that is, no symptoms of pain, but with that exception, which in itself may or may not mean
281 anything, we discovered nothing.

Q. What was the condition of his muscles, his bones, his heart and his lungs?

A. He was normal.

Q. A normal man?

A. A normal man for his make-up, or his type of man.

Q. What is this symptom or indication that you refer to as anesthesia?

A. Anesthesia—that is a lack of appreciation of sensation.

Q. To what extent did you make an examination of him, and

what did you find with reference to that particular situation in his case?

A. It involved the skin of the lower extremities, and I think part of the way above the knee—I can't tell you exactly; but there was no atrophy of the muscles, showing there was no loss of muscular tone as the result of any nerve injury or lesion, and it was simply cutaneous. That is something I have seen a number of times, where there was really no nerve lesion whatever. It may be caused by different things.

Q. I will ask you to state, if a man was suffering from anesthesia to such extent that the entire lower part of his body and legs were in that anesthetic condition for a period running from say, the 15th of March 1913 up to the date of your examination, as to what would be the result as to his lower limbs; you said, I believe, that you observed no atrophy of the muscles, or words to that effect. What would be the result of that in a case where there was anesthesia of the lower limbs for some length of time?

282 A. If the nerve supply of the muscles was interfered with the muscles would shrink more or less, perhaps in groups—some of them would shrink, perhaps not all.

Q. Did you find any evidence of that character in this examination?

A. No, sir.

Q. Will you please give us, in a general way, a description of the bones of the body; that is, the bones of the pelvis and vertebræ or back bone, as we call it; give a general description of the structure—

A. The back bone comes down, and then the pelvis, or these wings on our sides, are attached to it, one on either side, and then the thigh bones are attached to the pelvis and the weight of the body is conducted down through the spine, through the pelvis, through the lower limbs below.

Q. As I understand, the pelvis consists of two of the largest and strongest bones of the body, around the lower part of the body?

A. They are the wings on the sides that we feel.

Q. There is a wedge shaped bone that goes between the pelvis—

A. That is the sacrum—what we call the lower end of the spine.

Q. The spinal column is joined in segments, as I understand; is it possible to dislocate the joints of the pelvis?

A. You mean where the spine joins the pelvis?

Q. Yes.

A. You could have a partial dislocation I imagine, if the force was sufficiently crushing.

Q. What force would be necessary to dislocate the pelvis from the sacrum?

283 A. At the sacro-iliac joint?

A. Yes, sir.

A. It certainly would be a terrible crushing force.

Q. What would be the result of that, if that kind of violence had been applied and that had taken place, what symptoms would be found?

A. It would probably be accompanied by other injuries—probably be other injuries connected with it—a fracture of the pelvis, and I don't know what might take place in such a crushing.

Q. In this examination which you made with these gentlemen did you find any indications of that character at all?

A. None whatever.

Q. What did you find with reference to the condition of the bones of the pelvis and sacrum, and other bones surrounding that part of his body?

A. Normal.

Q. A normal condition?

A. Yes, sir.

Q. Are the bones of the vertebræ, or back bone, as we call it, always regular and sym-etrical in all people that are healthy?

A. Yes.

Q. Are they all of the same size?

A. Oh no, they differ in size in different parts of the spinal column. They are small towards the neck and as you go down they get larger.

Q. They are not regular and sym-etrical as to size?

A. No, sir.

284 Q. What condition did you find in this man with reference to his body in that respect? Was he normal or abnormal, or how did you find that?

A. He was a normally put up man.

Q. Did that examination that you made of this man include an X-ray examination of his body also?

A. Yes, sir.

Q. In taking an X-ray photograph of that portion of a man's body, with a view to ascertaining just what the condition is, what is the necessary and proper position in which he should be at the time, and which the instrument should be which takes the photograph?

A. Well, he should be perfectly flat and the plate under him should be flat, and the rays should be directed straight towards him, just like you look a man in the eye—you look right at the part you want.

Q. In order to ascertain the condition of the sacro-iliac joint, and the pelvic bones and the sacrum, and ascertain whether or not they are in a normal or abnormal condition, and as to whether or not any injury has been sustained by them, is it necessary to take a photograph from any angle, oblique, or is it proper to take it straight, as you have described it?

A. If you want to look at a man's pelvis you look at it so as to have it directly in front of you, and you look straight towards it—if that is what you mean?

Q. That is what I mean, yes, sir.

Q. A photograph should be taken that way.

Q. That is the proper way to take it?

285 A. That is the proper way to take it. You don't look at it around the corner, so to speak.

Q. If it is taken at an angle of some kind, what is the result of the picture you get—is it a true picture or not?

A. It is a true picture, but it is not a true picture of the front of the pelvis, anterior, posterior; it is at an angle.

Q. Did your examination of this man go to the extent that if there had been, or if there was, a separation between the sacrum and the pelvic bones on either side, that it would have been discovered?

A. Yes, sir.

Q. State to the jury whether or not that state of facts existed?

A. They were absolutely normal; both joints were alike—both sacro-iliac joints were alike and normal.

Q. What examination did you make, if any, of his muscles and what condition did you find them in?

A. He is really a spare made man, but I think—I di-n't see anything or notice anything wrong about his muscles or general make-up.

Q. Did you make any examination of his joints, and what was the result of that?

A. Yes, his knee and hip and ankles. He seemed to be normal.

Q. How about the movements of the joints in his body—normal or abnormal?

A. Normal.

Q. Were there any deformities?

286 A. No, sir.

Q. Well, did you make an examination of the spinal column of this man, and what did you ascertain with reference to that, as to the movements?

A. Normal.

Q. Did you notice the anterior and posterior and lateral movements?

A. Yes, sir, he could bend forward and back, and to either side. He had good control over his spine.

Q. What was the condition of the bones of his body in this examination—did you discover any deformity of any kind?

A. No, I don't recall anything wrong about them at all.

Q. Any evidence of abnormality about the bones of his body at all?

A. No, sir.

Q. How did you find his lungs at the time, and his respiration and chest expansion, etc?

A. I don't remember the figures exactly, but he was normal as I recall it—I can't tell what the chest expansion was.

Q. You know whether it was normal or abnormal?

A. Yes, sir.

Q. How did you find it?

A. Normal.

Q. Did you make an examination of his heart and the condition of that part of his body?

A. I don't remember whether I listened to his chest or not. Dr. Hall did, but I don't recall whether I did.

Q. Did you observe the reflexes of his body—of the upper
287 extremities, and how were they?

A. They were normal.

Q. How were the lower extremities?

A. My recollection is that his patellar reflex was a little increased, such as you might expect in a man in his condition who was being examined under the circumstances with a high pitched nervous system. My recollection is they were a little bit exaggerated—nothing under the circumstances abnormal.

Q. What do you mean by the patellar reflex?

A. If you cross your legs and hit this ligament that goes from the knee-cap to the upper shin bone—you hit it there and that telegraphs to the spinal cord, and without your knowing it your foot kicks up; that is the patellar reflex. It shows that the wires are corkscrewing correctly.

Q. As to his liver, stomach, kidneys and intestines, did you make an examination as to that, and how did you find that condition?

A. We made a general physical examination, such as you can with a man stripped, and there was nothing discovered. If there was anything wrong it was not discovered after a careful examination.

Q. As I understand, after you had completed this physical examination, that you made, you took an X-ray photograph of his body?

A. Yes, sir.

Q. Were those photographs taken in your presence?

A. Yes, sir.

Q. Were they properly taken?

A. Yes, sir.

288 Q. Was he in the proper position in which he should have been when they were taken?

A. Yes, sir.

Q. State what the X-ray examination developed as to the condition of the man's body?

A. It developed nothing abnormal.

Q. You said, I believe, that Dr. Harris was present at that examination also?

A. Yes, I think he stayed; I am a little hazy on that point. He was there, but whether he stayed all through it I am not positive.

Q. But your impressions is that he was?

A. Yes, that is my impression.

Q. Well, he stated he was. How then, did Dr. Harris present to you and for your examination there, an X-ray photograph, which was supposed to be a photograph, and which he stated to be a photograph of this man's spinal column, in which he showed some separation between the sacrum and the other bones of the body there?

A. Yes, sir.

Q. Did you examine that photograph?

A. Yes, sir.

Q. Well, state in your own way, just what you have got to say about that photograph?

A. There was a separation at the sacro-il-ac joint; you could see between the bones which go to form the joint. That was on the right side, as I recall it.

Q. How was that sort of thing brought about if that photograph?

289 A. Well, I know how it was brought about in this one—at least I think I do—I may be mistaken; but it was brought about by him lying upon the table not in *blat* position, but his pelvis was tilted—the spine was tilted on the pelvis. That opened the joint on the opposite side. There is a slight motility in this joint.

Q. I will ask you to state whether or not a photograph representing that condition as shown by that photograph, and by assuming that position and angle—whether or not a photograph taken of an absolutely normal man, that never had an injury in the world, would show the same thing?

A. I think it would.

Q. I will ask you to look at this Exhibit "A" to Dr. Harris' examination—is that the photograph, or the kind of photograph you are talking about?

A. I think this is the one. Of course I haven't seen it since last November, but I think that is the one.

Q. I will ask you to state as to whether or not a photograph of an absolutely normal man, one that never had an injury of any kind, can be taken, and show the same that that photograph shows, practically?

A. Yes, sir.

Q. Then, doctor, I will ask you to state what examination you made of this man at that time, what observation you had of him at that time, which reference to these subjective symptoms that you found, that would indicate as to whether they are real or feigned, whether they are permanent or temporary?

290 A. Well, I will answer the last part first: I am confident they are temporary. The real or feigned, is rather a hard question to answer, because this man, in my opinion is suffering in a measure, how great or how small I don't know—but he is suffering like many other cases I have seen, with what we call litigation symptoms—they are intensified by litigation. Hysteria can stimulate any disease, and so can litigation, and my opinion is, all the symptoms he is suffering from is what is known as litigation symptoms.

Q. As to their permanency; what would be necessary to relieve this man of the situation in which you found this man at that time?

A. Settlement of the suit.

Q. You think that will be the end of it?

A. I know it, as well as I know anything of the kind. Of course I may be mistaken, but I feel that I know it.

Q. Doctor, have you any interest in this litigation whatever?

A. None whatever.

Q. Have you any connection with the I. C. or Y. & M. V. Railroads?

A. None, sir.

Q. You are not an employee or theirs?

A. No, sir.

Q. No connection with them?

A. No, sir.

Q. You live in Omaha, Nebraska, in the state where this man lives?

A. Yes.

291 Q. And you are a surgeon, and have been a surgeon in Omaha Nebraska, since 1885?

A. Practiced surgery there since 1885. I graduated 34 years ago this spring, and I have been active all the time.

Q. I will ask you, doctor, whether or not you made an earnest and sincere effort to find out just what this man's condition was, at the time you made this examination?

A. Yes, sir.

Q. And you have given the result of that examination, as stated in your testimony here?

A. Yes, sir, the best I know how.

Cross-examination by Mr. Harrington

Q. Doctor, have you been in the service of any of the railroads at different times since you have been in the service?

A. I never had association except with the Rock Island railroad.

Q. What railroad was that?

A. Rock Island.

Q. You are the regular surgeon at Omaha for the Rock Island?

A. I am not.

Q. You were for many years?

A. Yes.

Q. Who has supplanted you in the service?

A. I don't know—I think Dr. Lord—I am not sure.

Q. Have you been employed and paid by other railroads?

A. Yes, I have been asked to examine cases by a number of railroads.

Q. You have been a witness for railroads?

A. Not often.

292 Q. Well, you have been?

A. I have been very seldom.

Q. This is not the first time I have cross-examined you as a witness for the railroad?

A. You may have once or twice before—not often though.

Q. Until we made it a criminal offense in Nebraska to ride on railroad passes, were you one of the men who rode on railroad passes?

A. No, I never did. The Rock Island railroad never gave us a pass. I think I had a pass from Omaha to—

Q. Have you had passes on the F. E. and M. V. railroad?

A. I think years ago, when everybody had a pass, I used to get out to go shooting.

Q. You have got a special car to go shooting on that railroad, haven't you?

A. No, sir.

Q. Where did you go, to Cherry County?

A. I paid my fare when I went shooting to Cherry County. I haven't had a pass on that road in probably 15 years.

Q. Isn't it a fact, till we made it a crime punishable by jail imprisonment, that you rode on passes all the time?

A. No, sir.

Q. Do you remember the Jas. R. Chase case?

A. Yes, that must have been 12 or 15 years ago.

Q. In the Jas. R. Chase case you examined Chase also?

A. Yes.

Q. Mr. Chase was a large land holder and president of the First National bank of Pilgah?

A. I don't recall.

293 Q. He claimed he was injured in his back, didn't he?

A. I don't remember now what the case was.

Q. Did you not go on the witness stand and swear that there was nothing the matter with Chase's back, and as soon as the law suit was over he would be all right?

A. Yes, he was a faker, too.

Q. Now tell this jury upon your oath, if within 17 months after the time you swore there was nothing the matter with him, whether that man died from the very injury he complained of?

A. If he is dead, I don't know it.

Q. Do you swear to the jury that it is not true that within 17 months after the time you said there was nothing the matter with him he died?

A. I will have to take your word for it.

Q. Will you deny that he died with this injury, when you swore he hadn't any?

A. I will have to take your word.

Q. You won't deny it to this jury?

A. I don't know.

Q. Now the-, you remember the Palmer case, too, don't you?

A. Where was it, I don't recall.

Q. The young fellow from Norfolk that got hurt at a wing fencing—

A. I don't recall it.

Q. Did you have an x-ray taken of that young fellow's right leg?

A. I don't recall; I don't remember the case. When was it?

294 Q. Did you pronounce that there was nothing the matter except a bruise?

A. When I don't recall it, how can I answer your questions?

Q. The Roy Palmer case?

A. I don't recall the case.

Q. Did you let it run 3 months and Dr. Allison have a different x-ray taken and find there was a green-stick fracture of the leg?

A. I don't recall the case.

Q. Did Dr. Allison have to perform an operation to perform the work that you didn't do?

A. You are asking questions I don't know anything about.

Q. You swear positively that you *kno't* know the Roy Palmer case?

A. I don't recall the case at all.

Q. Did you have something to do with the George Jeffry case?

A. I have had a great many cases—I don't know what you refer to.

Q. Did you report in your examination in that case for the M. & O. Company?

A. I don't recall.

Q. The M. & O. and N. W. Combined?

A. I don't recall the case.

Q. Did he claim he was injured in his back by falling from a car?

A. I don't recall the case. You are getting me mixed with somebody else probably?

Q. I am not mixing you at all——

295 A. Produce your records——

Q. Did you report in that case to the company that there was nothing the matter with his back?

A. Well, if I did I thought so—I don't remember the case.

Q. Didn't the company refuse to accept your judgment and pay him damages after he was examined by Dr. Jones?

A. I don't know.

Q. Isn't the man still going on crutches?

A. I don't know.

Q. Doctor, would you mind telling us what the Illinois Central is paying you to come here and testify?

A. I haven't any objection.

Q. What are they paying you?

A. My expenses and \$100.00 a day, and it is not what I make at home—I make that statement for your benefit.

Q. But you get \$100.00 a day for coming here?

A. Yes.

Q. Have you been a witness for the Union Pacific railroad also?

A. I expect I have—I don't recall just now. I haven't for a number of years. I would like to make a statement—I haven't been on the stand but twice in a case of this type in 15 years.

Q. That is of this type?

A. One of these suits against corporations.

Q. At the present time you are not the regular surgeon of any of the roads?

A. I am not the surgeon of any railroad.

Q. At the present time?

296 A. No, sir.

Q. How long since you used to be the regular surgeon for any railroad?

A. I resigned from the Rock Island I think a year ago last fall, or about that time.

Q. What do you say about the hip of this young fellow; isn't it true that one of his hips is lower than the other?

A. I haven't seen him since last fall. When he was put out flat he was just like everybody else. I can make mine lower or shorter just as I wish.

Q. What do you say if one of his hips is an inch lower?

A. I haven't examined him——

Q. Will you swear that is not the absolute God's truth?

A. No; he may have one leg longer than the other naturally—I don't know.

Q. Would that have a tendency to make a man lame?

A. Not necessarily.

Q. Doctor, what is a joint, by the way?

A. It is a place where two or more bones come together in the formation of the skeleton, which is intended for carrying the weight—or prehensile work perhaps on the part of the arm, or to carry the weight of the body upon the feet.

Q. Is there articulation in such cases?

A. Yes.

Q. Always articulation in a joint?

A. Yes.

Q. What is it that joins the sacrum—what bone?

A. The pelvis.

297. Q. You call it the pelvis?

A. Yes. The ilium, a part of the pelvis called the ilium articulates with the sacrum on each side, forming the sacro-iliac joint.

Q. Is there a joint there?

A. So-called joint.

Q. Is there a joint?

A. There is a joint—they join together; it is called a *point*—the sacro-iliac joint.

Q. Does it articulate?

A. Yes, it articulates, in that the bones come together and join, and there is cartilage and membranes supporting it and holding it; ligaments, front and rear.

Q. Does it articulate?

Q. It does not move like your knee or elbow.

Q. Then it does not articulate?

A. They come together like that (showing).

Q. They don't articulate?

A. No, they don't move like that (showing).

Q. So there is not a joint there at all?

A. There isn't a joint like the knee joint, but the bones come together to form the sacro-iliac joint, that has a very limited motion.

Q. Are you expert on the x-ray?

A. I had the first plant ever brought to Nebraska, and have always been interested in it and kept a plant up to within a practically short time ago. I have my work done now by experts.

Q. There has been great progress made in the last few years?

298 A. Yes, sir.

Q. You don't attempt to operate the machine yourself?

A. No, sir.

Q. You can't make anything show up bigger than it is with the x-ray, can you?

A. No, not properly taken.

Q. But you can hide a lot with it, if you know how?

A. I suppose you might, yes.

Q. For example, doctor, if the shadow throws right and you have the rays above it, it will show this opening in my hand (showing) just as there?

A. Yes.

Q. There is not any way to use the machine to make it show bigger, is there?

A. I suppose not.

Q. But I could gradually turn my hand this way till it would only show in part (showing)?

A. Yes.

Q. And could gradually get it to where it wouldn't show at all?

A. Yes, sir.

Q. You take an injury to the sacrum, it may at times result in inflammation there?

A. You may have inflammation anywhere.

Q. You may have it as the result of injury?

A. Inflammation in the sacro-iliac joint—yes, or any joint.

Q. Say in the whole sacrum itself—as the result of an injury?

A. Well, I suppose it is possible.

299 Q. May that inflammation thin the sacrum?

A. There is one kind of inflammation that thins the bone—that is rarefying osteitis, where the bones become rarefied. Inflammation means swelling—

Q. May an injury to the bone by falling—to the sacrum, thin the bone?

A. No.

Q. You don't think so?

A. I know it wouldn't.

Q. May it thicken the bone?

A. It might—it probably would if it were inflamed.

Q. Would that probably show in an x-ray?

A. It would be a pretty hard thing to show through the sacrum a thickening. It would be a very difficult thing.

Q. The rays will tell the thickening of a bone?

A. Not anterior, posterior through the sacrum.

Q. This connection we have been talking about, between the sacrum and the pelvis—is that something you can get a straight look at, or is it lapped?

A. Well, there is a little lap. But looking directly at—if the pelvis is tilted—if you tilt the pelvis this way you can see the joint very plainly, in the normal individual, with an x-ray picture. I have seen them.

Q. Isn't this a pretty fair illustration: my hands are now apart

(showing). Suppose you take an x-ray while it is lapped this way, will it show this opening in between them?

A. That is not a fair illustration—

300 Q. Answer my question—suppose you take it right straight from you to me, will it show the opening between my fingers?

A. I suppose not, unless possibly a little line at the edge.

Q. But if I put it in the jury box and let the rays come this way, it would show the opening?

A. It depends upon the point of view in which you look at it.

Q. If the X-rays came from the jury it would show it?

A. Yes, sir.

Q. The other way would hide the opening?

A. Yes.

Q. All these modern men that make a success with the machine, they take many views ordinarily of the ones where they are looking for fractures, don't they?

A. Well, you may have it.

Q. An injury to the sacrum is very often a pretty serious injury isn't it, doctor?

A. Well, you see so few of them; they are rare injuries.

Q. But it is recognized among the profession—for example, a woman may fall from a railroad train, or anything else, and hurt her back and as a result have retroversion of the womb—is that one common—

A. One of the supposed ones—it is another fake.

Q. You claim it is a fake?

A. Yes, as a rule.

Q. Do you know a case recently tried in Nebraska, the Morrison case, where there was not even a black or blue spot, that such an eminent surgeon as Dr. Dwyer examined and found a complete retroversion of the womb from that fall?

301 A. Did he examine here before she fell—I wouldn't place any confidence in it—

Q. Do you say the medical authorities don't say a common cause of retroversion of the womb is falling on the back?

A. Well, it is supposed to be by some people; it occasionally happens in some cases too—

Q. I am talking about what the books say—do they say it is a common thing for a woman to get retroversion of the womb by falling on her back—

A. I suppose it happens—I think the books say it. I doubt it. That has been handed down like a majority of other traditions.

Q. You swear those books are wrong?

A. You try to impress upon these people that I testify before juries for railroads. I have not. I have blocked a good many cases—I have blocked some of yours—

Q. You mean you have examined for them?

A. Examined and given my honest opinion, what I thought was the matter with the person, is all I have ever done.

Q. And those have been settled without litigation?

A. Yes, and one or two I recall, you have quit.

Q. That it was found the injuries were not of a serious character?

A. Found there was nothing the matter with the people.

Q. Will you name one case where I ever had examined by you where I didn't make the company come through, just one, in the twenty years I have been a lawyer?

A. I don't know. I know some things that have come from
302 you that were fakes.

Q. That you claimed the party was not hurt?

A. Yes.

Q. Do you know any instance where the company escaped?

A. I never following up all these cases. You brought one where he was supposed to have hernia, and the man had varicocele—

Q. You claimed it was varicocele, and other doctors claimed it was hernia.

A. No doctor that knows anything would.

Q. Doctors did claim it?

A. Somebody without knowing anything—no one that knew anything would do such a thing.

Q. You won't deny that Dr. Allison is a high class surgeon in Omaha—

A. Allison is a good man, but he never claimed that—

Q. You don't remember who it was?

A. Yes.

Q. Who was it?

A. A fellow on the railroad somewhere between—I have forgotten. He put a truss on a varicocele anyhow; you know what kind of a doctor he was—he was a friend of yours.

Q. You found that this man was suffering, as far as you could discover, from a bad case of anesthesia, didn't you?

A. Yes, he had some anesthesia.

Q. What is anesthesia?

A. Loss of sensation—in that case, the skin.

Q. No man can tell absolutely whether that is real or
303 whether it is put on, I suppose, ordinarily?

A. No, you can't tell absolutely.

Q. Nobody can tell whether I have got a pain in my foot except myself?

A. No, sir, those are subjective symptoms.

Q. When it comes to the matter of anesthesia, there are ways by which a surgeon can pretty well test it out?

A. Yes, you can tell a great deal about it.

Q. Now then, you and Dr. Lord and Dr. Hall thoroughly tested this young man out, by all the methods that you knew, to ascertain whether he had anesthesia?

A. Perhaps not all we knew, but all that seemed to be necessary and the occasion admitted of.

Q. Dr. Lord is also a railroad doctor?

A. Yes, he is a good doctor.

Q. But a railroad doctor?

A. That is a small part of his work—he is a general surgeon.

Q. He is for the Central?

A. He is the Central's surgeon. Dr. Lord is a square man—he is for what is right.

Q. He also has done lots of service for the Union Pacific?

A. He used to be connected with them, years ago.

Q. This Dr. Hall is the man who swears as an expert all over the United States for the different railroads centering in Chicago?

A. Hall has a good reputation.

Q. Is that his business?

A. I think he does a great deal of work for the railroads, and street railroad companies of Chicago.

364 Q. And the Ice Trust?

A. I don't know.

Q. You-men went after him, and just tell the jury what you did to ascertain whether this man had a real case of anesthesia, or whether he was a faker?

A. Well, his skin was pinched, and a pin or needle was used to touch him in different places to see whether he responded like anybody else. If you stick me with a pin, or one of those jurors, they will jump——

Q. Did he respond?

A. No, he did not.

Q. As far as the test went, it indicated that he had a genuine case of anesthesia?

A. There was one thing that happened—Dr. Hall stepped on his foot, accidentally I suppose, and he showed he felt it all right.

Q. You thought he did?

A. I saw it.

Q. How did you work him, one at a time, or two or three, to see if you could catch him?

A. Dr. Hall examined him in our presence. We would try things ourselves. It was all correct—all done in a very nice way.

Q. Did he have to go to bed when you got through with him?

A. I never have seen him from that day till now.

Q. You never saw him before and never saw him since?

A. I don't know anything about the man, any more than I told you.

Q. Did you stick any pins and needles in him?

305 A. I don't remember.

Q. Did you see any response to any pins or needles or anything else you stuck in him there?

A. I don't think he responded at all, in the area where it was tried. He was not jabbed. It was done in a nice, kind way, with the best intention.

Q. Did you also apply the sole of the foot test?

A. Yes.

Q. Tell the jury what the sole of the foot test is?

A. Well, there is a plantar reflex in the sole of the foot; if you scratch that with a pin, either the toes will go down or come up.

Q. How was it in his case, when you scratched his foot?

A. I don't remember what the reflex was. I think he had a normal reflex of the toes.

Q. As a matter of fact didn't his toes remain absolutely still, and didn't you so report to the railroad?

A. I don't recall the exact planter reflex.

Q. How were the patellar reflexes?

A. Slightly exaggerated—I recall that.

Q. Where a man has real anesthesia, and where he is not faking, where is the seat of the trouble?

A. Where he is not faking?

Q. Yes.

A. May be some disease of the nerves themselves, or may be some lesion of the spinal cord, or may be pure hysteria.

Q. You didn't find any evidence of hysteria in this man did you?

A. Yes, of the type what I consider litigation symptoms.

306 Q. You didn't find him in a hysterical frame, like a hysterical woman?

A. You don't have to have those.

Q. Do you know whether the seat of his trouble is in his spine?

A. I don't think there is anything wrong with it.

Q. Well, do you know?

A. Yes, as well as I know anything of the character.

Q. You don't know?

A. I know he has got nothing wrong with his spinal cord.

Q. You can't see the spinal cord, can you?

A. You are splitting hairs—I am telling you the best I know how, from a scientific standpoint.

Q. Will you tell me whether these vertebra are symmetrical or not; not whether there is a smaller one at the neck than down the back, but whether they are symmetrical?

A. Yes, they are symmetrical.

Q. How is it in this case—his first lumbar and 12th dorsal vertebra?

A. The x-ray picture showed a normal spine.

Q. Do you remember examining him yourself and remarking that the 12th dorsal vertebra was enlarged?

A. You often find the 11th or 12th dorsal—the prominence of them, in many individuals, a little more prominent than in other people. Those are the big vertebra.

Q. Did you find the 12th dorsal vertebra enlarged?

A. No, it was not the vertebra, as I recall, he had rather a prominent spine or vertebræ, which is nothing to do with the spinal cord—the furthest point away from the spinal cord in the whole

307 body—

Q. Was some of them enlarged more than the others?

A. My recollection is he had a relatively prominent 11th or 12th dorsal—I don't remember now.

Q. The x-ray might tell a little about that, too?

A. Yes, I have seen an x-ray today, and refreshed my mind on one taken at the time. He had an absolutely normal spine.

Q. Wouldn't this indicate at least a swelling of the spine—that is, suppose there was a difference in how the light shone on it—

A. No, that is the tail end of one of the vertebra—a little promi-

nence there (showing) I have it, and it is a common thing. I see it often.

Q. Suppose you have two vertebra, one larger than the other, will the x-ray light distinguish that to some extent?

A. Not anterior, posterior—it might from a side view, but not from in front.

Q. You might have to take it from a different direction to get at it right?

A. You wouldn't take it just for fun——

Q. Well, you might have to take it from a different viewpoint to find whether it was for fun——

A. If you are looking for something, and have good reason, you look from all directions.

Q. Did you cross-section this, as you call it?

Q. There was no reason to.

Q. Tell me whether or not it is not well recognized in the modern use of the x-ray, in dealing with the vertebræ, that they
308 cross-section them?

A. It depends upon the circumstances.

Q. Did you gentlemen cross-section this man's vertebræ?

A. No reason to.

Q. Did you?

A. No, there was nothing the matter with the vertebræ.

Q. That was as far as you could see?

A. As far as we could see, feel, or he had symptoms—what more could you do.

Q. You had an x-ray——

A. We had no time to waste.

Q. How could you tell there wasn't anything the matter if you didn't cross-section it?

A. That's ridiculous——

Q. Do you mean that all the modern experts of the x-ray don't cross-section the vertebræ?

A. Yes, they only do it when there is reason to do it.

Q. That is the only way you can be dead sure whether you are right or wrong, isn't it, by cross-sectioning?

A. You look at everything from every point of view you can to gain information.

Q. That is cross-sectioning?

A. It might be, and might not.

Q. That work you didn't do?

A. There was no reason to.

Q. You didn't do it?

A. No, we didn't do it, because there was no reason to do it.

Q. How many times did Dr. Hall step on this boy's feet while you were working there?

309 A. I just remember once; if he did it more than once I didn't notice it.

Q. Did he step on him three times?

A. Not that I recall. I only saw it once.

Q. Did you right there in the presence of this boy, say to Hall, "He certainly hasn't any feeling in his lower limbs?"

A. No, sir.

Q. You didn't say it?

A. No, sir, of course not.

(Witness excused.)

310 Dr. JOHN P. LORD, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. Where do you live?

A. Omaha, Nebraska.

Q. How long have you lived there, doctor?

A. 28 years last fall.

Q. What is your profession?

A. I have been a surgeon for about 22 years.

Q. Do you practice surgery in the City of Omaha?

A. Yes, sir.

Q. What connection, if any, have you with the Illinois Central Railroad Company as the representative there?

A. I am their district surgeon.

Q. To what extent does your service or connection with the railroad company bear to your other practice—are you exclusively in their service or not?

A. No, sir.

Q. Does that form the larger or greater part of your practice?

A. A very small part.

Q. Are you in the general practice of surgery in Omaha?

A. Yes, sir.

Q. Are you a regular graduate surgeon from any licensed medical college?

A. Yes, sir.

Q. What schools, doctor?

A. Rush Medical College, Chicago.

Q. When did you begin the practice of surgery?

311 A. The spring of '82.

Q. And have you continuously been engaged in that business since?

A. I practiced medicine and surgery until about 22 years ago, since which time I have limited my work to surgery exclusively.

Q. Are you acquainted with George R. Williams, the plaintiff in this case?

A. Yes, sir.

Q. Did you at any time recently have occasion to make any examination of him?

A. Yes, sir.

Q. Where was that, and when did it occur?

A. At my office in Omaha, the latter part of November; about the 21st I think.

Q. Who was present at the examination?

A. Dr. Summers of Omaha, Dr. Harris of Omaha, Dr. Hall of Chicago, and my nurse at the office, and myself. The nurse was only present part of the time, however.

Q. What was the nature and character of the examination which you gentlemen made of this man at that time?

A. It was a general examination. We first went into the history of the young man; his history, that is, as regards illness and injuries; the character of his occupation, and then we went into the examination of the physical condition of the man.

Q. In order to make that examination, what was done by way of preparation; in other words, was he clothed or unclothed at the time?

312 A. When his body was examined he was stripped.

Q. Did you make a thorough examination of his entire body physically?

A. Yes, sir, Dr. Hall made the principal examination, but I was present at all times, and verified his findings—at least was satisfied in regard to his examination.

Q. Will you please state, in your own way, and so the jury can understand you, just what physical examination of his body you made, and what the result of it was? First, however, I will ask you to distinguish between symptoms. There are what are called subjective and objective symptoms, I believe the surgeons call them—what is the difference between them?

A. The subjective symptoms are the ones that are obtained from the patient, and the objective symptoms are those that are determined by the doctor—what he sees and what he feels, etc.

Q. Did you make an examination of him which included the muscles of his body?

A. No more than an inspection, but I witnessed the testing of the reflexes and his sensation, etc.

Q. How did you find them to be?

A. They were made by Dr. Hall, but I was able to notice the results of his examination.

Q. What were those results?

A. His reflexes were practically normal.

Q. Did you make an examination of his joints?

A. They were made, yes, sir.

Q. Did you find any discolorations?

313 A. No, sir.

Q. What were the movements of the joints, normal or abnormal?

A. Normal.

Q. Were there any deformities?

A. No, sir.

Q. Did you make an examination of his spinal column?

A. Yes, sir.

Q. What was the result of that examination; how were the movements of the body in that respect?

A. They were normal, except that he stood in a slightly stooped attitude.

Q. In other respects you say they were normal?

A. Yes, sir.

Q. Now about the anterior, posterior, and lateral movements of the body?

A. They were practically normal; not restricted especially.

Q. Did you find any deformity or other evidence of abnormality in any of his bones?

A. No, sir.

Q. How about his lungs and respiration—what was the action of the lungs; was that abnormal?

A. No, sir.

Q. Was it normal or abnormal?

A. Normal.

Q. And his respiration; how did you find that to be?

A. Normal.

Q. Did you examine the condition of his heart?

A. Yes, sir.

Q. How was it, as to size and action?

314 A. Normal.

Q. What are denominated the reflexes of the body—does that mean the action of the joints—I didn't exactly understand it?

A. The reflex is the movement that is brought about when certain parts of the body are struck and there is a muscular recoil.

Q. What is meant by the reflexes of the upper extremities of the body?

A. The most common ones taken are those of the muscles of the fore arm; the tapping upon the muscles of the fore arm will cause a contraction of the muscles and produce a movement of the hand.

Q. What are the reflexes of the lower extremities of the body?

A. The most common and ordinary reflexes of the lower extremities are those taken at the knee, known as the patellar reflex. The patellar tendon at the knee is struck, and it causes the toes to jump upward.

Q. How did you find the reflexes in this man's body at the time of this examination?

A. They were practically normal. They were a little more active, possibly, than the average.

Q. How about sensation; did you examine him as to that feature of his physical body?

A. Dr. Hall went into that very extensively, and we observed him closely, and when the patient was off his guard he would not observe—or would observe—well, there were different tests made by the fingers and a pin, and when the patient was conscious of what was being done he claimed not to have sensation, and when
315 he was off his guard, however, he seemed to flinch.

Q. Well, as the result of that examination then, for sensation, what did you determine about that?

A. I determined that the patient's sensations were controlled by his mind—by the state of his mind.

Q. I will ask you whether or not, after having completed your physical examination, you continued that examination by x-ray process?

A. Yes, sir.

Q. Well, was that done in your presence?

A. Yes, sir.

Q. Was it properly done?

A. I so considered it, yes, sir.

Q. What experience have you had in the observation and reading of the results of x-ray examinations?

A. I have had an x-ray apparatus since it was first introduced, and have had one in my office constantly since that time, and have made almost daily use of it.

Q. Well, you were able to determine then, as to whether or not this x-ray examination was properly made?

A. Yes, sir.

Q. Well, what did that develop as to the condition of the man, as to his body, and the results of it?

A. It showed no deviation from the normal.

Q. As I understand then, the result of the examination showed his body and bones were in a normal condition?

A. Yes, sir.

Q. Now, doctor, what is the general structure of the body, 316 around the middle part of the man's body—his hips and all that. Give the jury a general idea of how the human body is framed in that respect. In other words, to get at it more quickly, I will ask you what are the pelvic bones of the body?

A. They are the large bones into which the hip bones are set. There are two pelvic bones, one on either side.

Q. What is the bone that is between them, if there is any?

A. Behind there what is called the sacrum, they are the muscular body of the vertebrae in that region—they constitute a sort of wedge shaped, or flat iron shaped, bone known as the sacrum.

Q. How is the sacrum and the pelvic bones joined together?

A. They are joined together by a large ear shaped joint, and it is set on in a sort of bevel fashion, overlapping as it were, the sacrum, and it is secured there by strong ligaments.

Q. Is it possible to have dislocation of the pelvic joint—or the sacro-iliac joint?

A. It is possible, yes, sir.

Q. What would be the necessary result of that, if it occurred?

A. That would depend upon the extent of the dislocation. A dislocation would be the extremest damage or injury to that part. It is ordinarily spoken of as relaxation, a separation and loosening of the ligaments, but a dislocation is quite rare. The effect of that would be difficulty in walking, and later perhaps an inability to walk.

Q. Where there had been, if there was in a man, on account 317 of some external violence, a separation between one of the pelvic bones and the sacrum, on either side of his body, and that condition had existed and continued to exist from March 15, 1913 up to the date of your examination of this man, please state whether or not your examination of this man on that occasion would have developed that situation?

A. I think it would.

Q. State whether or not the x-ray examination which you made of him would or would not have developed that, if it were true?

A. If it was a fact, a dislocation, it would show it.

Q. State whether or not your examination, both physical and x-ray examination, made as you say they were made, showed any separation, or dislocation, or abnormality of any kind of any of the bones of his body there?

A. It did not.

Q. What did it show as to the condition?

A. Did not show anything.

Q. Well, did it show the condition of normality or abnormality?

A. It showed a normal condition.

Q. Well, can you say then, doctor, as a matter of fact, whether there is anything the matter with his sacrum and the pelvic bones at that time?

A. Supplemented by the examination which was made, I would say that there was not. I would not depend upon the x-ray entirely or exclusively.

Q. Were you shown at the time, by Dr. Harris of Omaha, 318 what purported to be an x-ray photograph of this same man taken at some prior date?

A. Yes, sir.

Q. Which indicated a separation of the bones?

A. Yes, sir.

Q. State whether or not that was a true photograph of this man's condition?

A. It was taken at such an angle that it showed the normal separation; at least it allowed the rays of light to pass through this crack as it was between the cartilage. There is cartilage between the bones in joints, and the rays will pass through cartilage and will not pass through bone, therefore, it shows a space through which the light goes and shows a light streak on the plate.

Q. State from your experience in handling of x-rays, and making those kind of photographs, whether or not a photograph of that kind as shown you here, can be taken of an absolutely normal man, who never had any injury at all, and show the same situation?

A. I would expect it would show the same condition, taken in the same manner.

Q. What would be the proper position—if you, as you were at that time in undertaking to ascertain this man's condition—what would be the proper position to take an x-ray photograph of his sacrum and pelvic bones, with a view of ascertaining his then condition?

A. Straight through from the front.

Q. That would be the proper way to do it?

A. I so regard it, yes, sir.

319 Q. If there had been a dislocation or separation would the photograph taken under those conditions develop it?

A. A dislocation, yes, sir.

Q. Did you find any such condition with this man at that time?

A. No, sir.

Q. I will ask you to state what, in your judgment, after a careful examination of the man, was his then condition. Give us a diagnosis

of the situation in which you found him at that time—your diagnosis?

A. The man was apparently somewhat nervous. He was in a condition that we regarded as litigation neurosis—a sort of neurasthenic condition, a condition of nerve exhaustion, in which he was at a sensitive state, and his mind had been upon this condition, or he had been brooding and thinking upon this condition evidently so long, that these things were assumed, in my judgment.

Q. State to the jury as to what your opinion is as to the permanent or temporary character of the symptoms that you have described—whether that man's condition is a permanent one or a temporary one?

A. I regard it as temporary.

Q. What, in your judgment, doctor, would be necessary to bring about a change in his physical condition, and remove the symptoms which you have described?

A. To be rid of the worry incident to a law suit, and to be free from these suggestions that are constantly presented to him by a recitation of the symptoms of the supposed condition.

320 Q. State whether or not this man was suffering, and is suffering, from any permanent injury?

A. I do not consider that he is, no, sir.

Q. And that examination you made of him, as I understand you, was in November of this last year?

A. Yes, sir.

Q. About November 21st or 22nd?

A. Yes, sir.

Q. Doctor, suppose a man was suffering with anesthesia of the lower limbs, brought about by some external injury, and had so suffered, without any sensation of any kind in his lower limbs, from the 15th of March, 1913, continuously up to the date of this examination that you make; please state whether or not there would be any indication of that condition in the lower limbs by way of atrophy, or enlargement either, or any respect—what would be the result, muscular or otherwise?

A. There is usually some atrophy; not necessarily, however. It would depend upon the condition to which it was due, when it accompanies grave spinal cord lesion, like locomotor ataxia or other form of paralysis due to disease of the cord, there would be atrophy. In hysteria or assumed insensibility there would not necessarily be very much difference.

Q. Did you find any disturbances of that kind in this man's condition?

A. No, sir.

Q. As I understand you then, doctor, after a careful, critical physical examination of this man, and an ex-ray examination of him made properly in your presence, you found his condition was absolutely normal in all respects, except some
321 anesthesia in the lower limbs, which you have described?

A. General neurasthenic condition, yes, sir.

Q. Was there anything else the matter with him at that time?

A. No, sir, we didn't discover it.

Q. You were present and took part in that examination throughout the entire time?

A. Yes, sir.

Q. Did you at any time during that examination say to this young man, or say to any of your associates in the presence of this young man, words to this effect—after applying some test of some kind—"Why this man certainly has no sensation in his lower limbs"?

A. No, sir, I have no such recollection.

Q. Did you make any such statement as that?

A. No, sir.

Q. Is that your judgment about it?

A. Yes, sir.

Q. That you did not make the statement?

A. Yes, sir.

Q. And you had no such judgment about the condition—you have not detailed any such here?

A. No, sir.

Cross-examination by Mr. Harrington:

Q. You came to Omaha in '82 did you?

A. No, sir, I came in '86.

Q. Where did you first locate?

322 A. Creston, Illinois.

Q. And you practiced medicine there as a general practitioner until '86?

A. Yes, sir.

Q. How long did you remain in the general practice in Omaha?

Q. Between 6 and 7 years after coming there, as I remember.

Q. Then you went into surgical work?

A. Yes, sir.

Q. Did you become affiliated with any railroad at that time?

A. Yes, sir, soon after—in '93 I think.

Q. What railroad?

A. Union Pacific.

Q. That is one of the very largest transportation systems in Nebraska?

A. Yes, sir.

Q. No doubt, doctor, you and your family have had railroad passes?

A. Yes, sir, at times.

Q. How long did you continue on the staff, doing some work for the Union Pacific railroad?

A. I think it was about 5 or 6 years.

Q. Were you associated with Dr. Galbreth in that work during part of the time?

A. Yes, sir.

Q. What other railroads have you earned any money from, besides the Union Pacific?

A. The Illinois Central, and a year and half the Rock Island, their local surgeon there.

Q. Have you done any work for any other railroads?

323 A. I think not, except possibly I may have been drawn into litigation cases.

Q. You have been an expert witness for some of the other roads, haven't you?

A. I think on one or two occasions.

Q. What other railroads have you been an expert witness for?

A. The Northwestern—I can't recall, but it seems to me there were one or two others.

Q. The Elkforn?

A. I referred to the Elkhorn—that is the Northwestern.

Q. Do you remember any cases where you were a witness?

A. I was a witness in a case tried at Stanton about 5 years ago—I forget the name of the man, a farmer.

Q. A farmer and president of a bank—Mr. Chase?

A. I don't remember really.

Q. Rather a tall man, and wore a mustache?

A. Yes, sir.

Q. The only case you ever testified in at Stanton for the Northwestern?

A. Yes, sir.

Q. You examined him?

A. Yes, sir.

Q. He had the Elkhorn sued for an injury to his back?

A. Yes, sir.

Q. You testified before that jury, that in your opinion there was nothing the matter with his back?

A. That is my recollection, yes, sir.

Q. And that he was simply suffering from nerves or something of that sort?

324 A. I don't remember the details.

Q. And as soon as the law suit was over, in your judgment, he would get all right?

A. I don't remember at to that.

Q. You don't remember whether you testified that or not?

A. No, sir.

Q. You do remember you claimed there was nothing the matter with his back, don't you?

A. I don't remember that—I state it that bluntly.

Q. He was a man who had been simply a passenger on the railroad?

A. I think he had been shipping stock at that time.

Q. He was not an employee any way?

A. No, sir, not as I recall.

Q. Doctor, isn't it a fact that within 17 months after you swore before that jury that there was nothing the matter with his back, he died from this very injury, on his farm north of Pilgah?

A. I wouldn't say that.

Q. You wouldn't say that is not true?

A. I don't know—I never heard anything about it.

Q. You have very often been mistaken in your diagnosis?

A. Very often.

Q. In fact, no matter how honest a surgeon is, they all do make mistakes?

A. Yes, sir.

Q. Another thing, doctor, you never saw this boy, Williams, until that day you examined him?

A. No, sir.

325 Q. And never since, until you came here?

A. I think not.

Q. It is not as easy to form a judgment as what the real trouble is, and whether it is real or a fake, by the examination you made, as a man who treats him for months and months?

A. No, sir.

Q. Suppose, doctor, that this boy fell—climbed up the side of a railroad car, 15 or 16 feet high, with his hand up above the roof, and his feet up in this position (showing), that the hand hold gave way and he fell clear to the ground becoming unconscious; when seen by the general surgeon of the Illinois Central a couple of hours afterward was still unconscious; that he couldn't bring him to consciousness; that he sent him to the hospital in an ambulance—suppose he struck on his back, what would be the probable effect of such a fall upon him now?

A. Well, there would be a considerable shake-up necessarily.

Q. It might easily result in a pretty serious injury to his back, might it not?

A. It could.

Q. And it might result in anesthesia, might it not?

A. It could.

Q. And such a fall as that might even in some cases result in total paralysis of the lower limbs?

A. It could if it broke his back.

Q. Well, of course if it severed or practically severed, or destroyed the function of the spinal cord, it might so end?

A. Yes, sir.

326 Q. Would the fact that a man remained unconscious for hours after a fall of that kind probably indicate that he had a pretty serious injury to his back?

A. It would indicate more that he had some injury to the head—some concussion of the brain.

Q. Even that may affect the spine, may it not—an injury of that kind that would result in concussion of the brain, it might affect the spine too?

A. It might.

Q. Likely the only person who knows absolutely whether he is suffering as the result of an injury to his spine, or whether he is faking it, is this boy himself—isn't that true?

A. Yes, sir.

Q. The rest of you can simply give your opinion from such examination as you made?

A. Yes, sir.

Q. From the facts I have stated to you, you don't mean to say this boy was not injured, do you?

A. Your statement is assumed?

Q. Yes, but I say, if that is the undisputed facts, you would look for a pretty serious injury?

A. It might be serious, or might be very temporary. We have all had that kind of injury ourselves.

Q. Suppose, after he is in the hospital for a time, he goes to another doctor, as he did in this instance, and this anesthesia is found to be developing then—before there was any lawsuit, months before any lawsuit is through—of, you would hardly attribute that to a lawsuit, would you?

327 A. No, sir.

Q. In other words, you don't know whether that is the real facts in this case, that the first doctor that examined him, who was not a railroad doctor, found this anesthesia beginning to develop?

A. No, sir.

Q. If you did know it to be the actual fact, it would have a pretty important bearing with you in forming your opinion of this boy's condition, wouldn't it?

A. Have some influence, yes, sir.

Q. You would be pretty much inclined to think it was the real thing if that be the fact, wouldn't you?

A. Not necessarily.

Q. I say you would be inclined to think so?

A. I would give it weight.

Q. In other words, all these things—you may be right and may be wrong—nobody can be sure, can they?

A. No, sir.

Q. Now, doctor, did you help undress this boy when you examined him there?

A. I think I did—I don't remember distinctly.

Q. Did he have a brace upon him?

A. I think he had a sort of corset. That is my recollection.

Q. Did you help him dress?

A. I think I did.

Q. Did you help to steady him on his feet yourself, while he dressed?

A. I gave him such assistance as was necessary—extended him the courtesies of the office, as I would any patient.

328 Q. Of course, he was in your office and you treated him in a gentlemanly manner?

A. Yes, sir.

Q. And you gave him such assistance there in dressing as you thought necessary?

A. Yes, sir.

Q. What was the height of this boy's hips—was there a difference between them; was one of his hips an inch lower than the other?

A. I think that would be in the position in which he would stand. He usually stood on one leg—everybody's hips are more or less altered by the position.

Q. There was an inch difference in the height of his hips at the time you examined him?

A I didn't measure it in that respect, no, sir.

Q. That would be a pretty important thing to know in this case, wouldn't it, whether one hip was an inch lower than the other?

A. Well, if it was permanent, yes, sir. My recollection is that he was square when he laid down.

Q. Is there a difference between a dislocation and a separation of what is called the sacrum from the pelvic bone?

A. Dislocation implies considerable alteration in the relation of the surfaces; a relaxation would simply be a loosening incident to some stretching of the ligaments, and it is a matter of degree rather than a matter of difference.

Q. A dislocation is the most serious of the two, if you make a distinction?

A. Yes, sir.

329 Q. In case of a dislocation would there probably be lameness?

A. Yes, sir.

Q. And probably permanent lameness?

A. Not necessarily. Those things do not usually remain permanent—they tighten after a while.

Q. Sometimes they are permanent and sometimes not?

A. I never knew one to be permanent.

Q. Suppose that a boy fell from a railroad car, in the way I have said, on March 15, 1913; was rendered unconscious and that from that day to this he has never been free from lameness, that is, never been able to walk without either the aid of crutches or a cane; would that probably indicate a pretty serious injury, doctor?

A. It would indicate some injury.

Q. And probably in what region would it indicate the injury?

A. It might be in the sacro-iliac joint, or it might be in other places.

Q. You wouldn't be surprised, if he was struck in the back, and he was in that lame condition, that the injury was to the sacro-iliac joint, would you?

A. I wouldn't necessarily assume that. I don't know that I ever encountered a case caused by a fall upon the back—it is usually produced in other ways.

Q. It would indicate an injury of a pretty serious character, wouldn't it?

A. It would if that be true.

Q. If that be the undisputed fact, it would?

A. Yes, sir.

330 Q. What do you say, where a man is injured March 15th, 1913, by falling from a railroad car, rendered unconscious for hours, lame ever since—can't walk or move about except with the aid of a cane or crutch—as to whether it will continue, doctor?

A. Well, it might and might not.

Q. Isn't it pretty likely, if it lasts for two years, that it will continue to last?

A. Not necessarily.

Q. I didn't say necessarily; I know all these things are uncertain—but what is the probability?

A. Well, assuming that were true, I would assume that under proper treatment it would speedily recover.

Q. After two years?

A. Yes, sir.

Q. Why doesn't he recover within the two years?

A. In a condition of that kind, if the patient continues around on his feet all the time, and is not properly supported, there is not anything being done to prevent movement in the separated joint.

Q. Is this boy wearing, in your judgment, the right kind of support?

A. I don't so regard it.

Q. What kind of support do you think he ought to wear?

A. Assuming the kind of trouble he claims—I didn't find that trouble—

Q. What kind do you think he ought to wear?

A. Assuming the kind of trouble he claims he has, he should wear something different from what he has now.

331 Q. Suppose he has the kind of trouble he says he has, what kind of harness do you think he ought to have?

A. If he has the trouble he claims, he should have a support adequate to hold him together and prevent movement of the joint.

Q. Something stronger than he has now?

A. What I saw was very inadequate for trouble of that kind.

Q. It is a steel band isn't it?

A. Yes, but I didn't consider it gave support where the support was needed.

Q. Where did you think it was needed?

A. In cases of this kind, to give the support just above the hips and around the pelvis, and worn sufficiently tight to hold the parts together, and if the dislocation is sufficient to warrant it, the patient is kept in bed. But we didn't find those conditions, and this treatment would not apply in this case.

Q. You say you think a normal man might be turned to show such an opening as in Dr. Harris' Exhibit "A"?

A. That would be my opinion.

Q. Did you ever try it?

A. I never did.

Q. You never saw a case where it was done on a normal man?

A. I have seen pictures that were taken.

Q. Of course, by a normal, man, you mean the average of 1,000 to speak?

A. Yes, sir.

Q. And there are normal men whose joints are different from others?

332 A. Yes, sir.

Q. That picture couldn't be made to show a bigger opening than exists, could it?

A. Hardly.

Q. In other words the x-ray wouldn't show any more than the eye, but it may show less?

A. Yes, sir.

Q. And very many times you have to turn the machine in different directions to find out what the real trouble is?

A. Yes, sir.

Q. And in recent years there has been discovered that a lot of the early work wasn't well done, and they can do it much better now, and find with more certainty what the trouble is?

A. Yes, sir.

Q. And in early years the most distinguished surgeons were not able to get all out of the x-ray that they can get out of it today?

A. No, sir.

Q. Does the x-ray Dr. Harris made there, show a separation—this Exhibit "A"?

A. An apparent separation, yes, sir.

Q. You didn't take any x-ray from that point of view, did you?

A. No, sir.

Q. You took it straight through?

A. Yes, sir.

Q. Doctor, do these bones of the sacrum and pelvis over lap?

A. Yes, sir.

333 Q. I call your attention to a picture here in Gray's Anatomy, figure 208, and will ask you to state whether or not that is a fair representation of the sacrum and the whole surrounding parts there?

A. It is, I am familiar with it.

(This picture, Figure 208 in Gray's Anatomy is here offered in evidence.)

Q. There is a turn around like this (showing) in there, or do you call it a bevel?

A. Well, there is a sort of bevel lap, yes, sir.

Q. Suppose I hold my hands in that position (showing) and you have a machine and turn the x-rays from here, will it show that opening between my fingers now?

A. No, sir.

Q. But if this young man held the machine, and the x-rays came through, it would show the opening?

A. It probably would, yes, sir.

Q. So whether it shows the opening or not depends on the direction you turn the rays on it?

A. We are not at the same understanding on this thing. When there is a dislocation there is a sagging downward of this bone here (indicating of figure 208) a slipping down. It is necessary to take them in the center in order to have them both for comparison. You have to compare the dislocation with the normal side, just as if we were taking a picture of the elbow joint to determine a dislocation or fracture, we would take the normal side as a control, as we call it, so we can make an accurate observation as to whether there

334 is anything abnormal or not, or any slipping or malformation; and the same rule holds true here. We don't try to determine the amount of gap—there is none, there is a slipping, and the deviation is not at the edges of the bone, rather than by

undertaking to throw light through this very wide and deep joint. Up and down that joint is probably $3\frac{1}{2}$ inches in extent, and from side to side from $1\frac{1}{2}$ to 2 perhaps in breadth; so there is a considerable surface to overlap that would make it impracticable to undertake to get an idea of that joint by any use of the x-ray from a lateral direction.

Q. Then you didn't take it from the lateral direction?

A. No, sir.

Q. And it wouldn't show the opening from the way you took it?

A. We were not looking for an opening.

Q. Another thing: when there is a separation there, or a dislocation, there is a slipping down, isn't there?

A. In extreme cases, yes, sir.

Q. Do they call that sometimes a set off?

A. It might be called that.

Q. If there was a slipping down there of a quarter of an inch, it would be dead open and shut that there had been either a separation or a dislocation, wouldn't it?

A. Yes, sir.

Q. And if the x-ray picture shows that quarter of an inch slipping down it is a sure shot open and shut thing that there is a dislocation or separation?

A. If the x-ray is taken before, backwards, and it shows
335 one side a quarter of an inch lower than the other, we could fairly assume that there is some difference there.

Q. Suppose the picture of Dr. Harris' that is taken there, and shows both hips, and if that x-ray on one side does show a slipping down of a quarter of an inch, isn't it dead *upon* and shut that there is a separation or a dislocation?

A. Not in that position—it would be a distorted image, and would be absolutely unreliable.

Q. You think it would have to be absolutely straight in front and behind?

A. Yes, sir.

Q. You think the shadows have nothing to do with it?

A. The normal shadows, yes, but not the shadows that would be produced by taking it at a certain angle on one side and an absolutely different angle on the other.

Q. Is there any way of taking an x-ray of the hip from front to back without encountering this overlapped bone position?

A. No, sir, not if it is taken directly front or directly back.

Q. If you take it in front is there any bone to throw a shadow?

A. Only the bones concerned, the sacrum and the ilium. The public arch stands below.

Q. Doesn't the public arch, in taking an x-ray from the front, cast a shadow?

A. Not upon this part up here—it is several inches away.

Q. How much lower down will it cast the shadow?

A. I never measured it, but I should say this is a fair
336 representation (indicating on figure 208), and I should judge the distance to be at least 4 or 5 inches.

Q. It is not in every case of anesthesia that you find atrophy of the muscles, is it?

A. No, sir.

Q. Might a gain or loss in weight throw some light on whether the injury was real or feigned?

A. It might or it might not.

Q. In the inquiries you made of this young man, he told you his weight before the injury?

A. Yes, sir.

Q. He told you he weighed from 150 to 155 pounds?

A. Yes, sir.

Q. You and Dr. Hall thought this question of weight was quite material?

A. We usually give it proper consideration.

Q. Why did you want to know whether he was gaining or losing in weight?

A. Well, that is a question we usually ask, to know whether a patient is gaining or losing.

Q. What was your purpose in this instance, doctor?

A. The purpose is to know whether a patient is gaining in health or losing it, or stationary, as the case may be.

Q. And if you found he had been right along losing in weight that would indicate his health was failing?

A. It would indicate something had been the cause of that, yes, sir.

Q. You weighed him and he weighed 136 pounds?

A. That is my recollection.

337 Q. Can you tell this jury what it was that caused this young man to drop from 150 or 155 to 136?

A. I couldn't tell, because that might be due to various causes.

Q. You can't give this jury any light on what it was that has caused it, as far as your personal examination or personal knowledge goes?

A. No, sir.

Q. Dr. Harris showed you this x-ray he had taken?

A. Yes, sir, at my office.

Q. And told you he had taken some others?

A. Yes, sir.

Q. He is recognized as a man of good character and standing in Omaha?

A. Fair, yes, sir, for his age.

Q. He is a bright young man for his years?

A. So regarded, yes, sir.

Q. Personally you are not a radiographer, are you doctor?

A. Not in that sense, no, sir. I formerly operated the machine when it first came out, and afterwards turned it over to an assistant.

Q. Who acted as the radiographer in taking the x-rays at the time you examined this boy?

A. My nurse.

Q. Who was that?

A. Miss Nations.

Q. And who directed the position in which the machine should be held and the rays turned on?

A. I think I supervised that, yes, sir.

338 Q. What is a radiographer?

A. It is one who practices radiography, or takes x-ray pictures.

Q. Mr. Harris, before you made this examination, showed you this picture he had taken?

A. I think it was before, yes, sir.

Redirect examination by Mr. Wells:

Q. You were asked a hypothetical question by counsel; that is to say, if a young man climbed up on a box car 15 or 16 feet high, and fell off on his back, or fell off backwards, and became unconscious and remained so for a number of hours, as to whether or not that would indicate that he had suffered some serious injury to his back. You stated that was an assumed case. Now, assuming the same facts which were detailed to you by counsel in propounding his hypothetical question, if that same young man who fell off of the car and became unconscious, and had the symptoms which were detailed by counsel, was brought to you for a personal, physical and x-ray examination, would you or not be able to ascertain whether he had suffered this supposed injury that was assumed?

A. I think I could, yes, sir.

Q. Well, the plaintiff in this case, who was assumed to have fallen from a car and to have had this injury, was brought to you for your examination, was he not?

A. Yes, sir.

Q. You made that examination did you, critically and in every way known to you, and was scientifically made?

A. Yes, sir.

339 Q. State whether or not that young man then had suffered any injury to his back or spine, or sacro-iliac joint, or any dislocation of any kind?

A. No, sir.

Q. So that, in the assumed case that you answered there was no opportunity of an examination, and in the instant case you have actually made the examination?

A. Yes, sir.

Q. And you state as a fact that there was no injury to this man?

A. No evidence of it.

Q. No evidence of it whatever?

A. No, sir.

Q. Doctor, you alluded, both in your leading examination and your cross-examination, to certain x-ray photographs which you took, or had taken upon your supervision, in your office of this young man, the plaintiff, George R. Williams, with a view of ascertaining the conditions which existed at that time. Will you please examine the photographs that I now hand you, in such a way as to identify them if you can?

A. They are the same, yes, sir.

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Q. Those are the two photographs that you took there at that time, are they?

A. Yes, sir.

Q. Will you please hand them to the stenographer and allow him to mark them for identification, and make them exhibits to your testimony?

(These plates are marked Exhibits 1 & 2 to testimony of Dr. Lord.)

340 Dr. J. F. SUMMERS, recalled by the defendant, testified as follows:

Direct examination by Mr. Wells:

Q. Doctor, you made reference in your examination here to photographs which were taken by three of you gentlemen at Omaha on November 21st, when the examination of the plaintiff in this case was made by you; will you please examine those which appear there and state whether or not they are the photographs which were taken at that time?

A. Yes, here is one of them.

Q. Examine the other one that is in that same box and see if that is the other?

A. Yes, sir.

Q. Those are the photographs that you referred to and that were taken at that time?

A. Yes, sir.

(Witness excused.)

341 Mr. E. K. WILLIAMS, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Well:

Q. Your name is E. K. Williams?

A. Yes, sir.

Q. Where do you live, Mr. Williams?

A. I live at Jackson.

Q. How old are you?

A. "7 years old.

Q. About what is your height, if you know?

A. About 5 feet, 11½ inches, something like that.

Q. What is your weight?

A. 145.

Q. Mr. Williams, have you ever suffered any injury of any kind whatever, in your life?

A. I have had both my arms broken, that's all.

Q. Have you ever suffered any injury to any other part of your body?

A. No, sir.

Q. Have you ever had any injury of any kind to your spine, or spinal column?

A. No, sir.

Q. Have you ever had any injury of any kind to the bones of your body below the waist?

A. No, sir.

Q. Or that part of your body at all?

A. No, sir.

Q. You are a perfectly healthy man, are you?

342 A. Yes, sir.

Q. And your body is in a normal condition?

A. Yes, sir.

Q. Now have you recently had an examination made of your physical structure and physical condition, by any physician here in the city of Jackson?

A. When do you mean?

Q. I mean have you been examined physically by any physicians, and any photographs taken of your body recently?

A. There was one taken last night, yes, sir.

Q. You know what is meant by an x-ray photograph taken of a man's body, do you?

A. Yes, sir.

Q. Have you ever had any x-ray photograph taken of your spine and your body around below the waist, of the Pelvic bones and all that?

A. Yes, sir.

Q. When was that done?

A. Last night.

Q. And by whom was it done?

A. Dr. Liddle.

Q. He is the gentleman who has his office in the Century building?

A. Yes, sir.

Q. A specialist here in that line?

A. Yes, sir.

Q. Who was present at the time when that was done?

A. Dr. McLean of this city, and Dr. Galloway, and another doctor.

Q. Dr. Hall?

343 A. Yes, sir.

Q. Dr. McLean and Dr. Galloway were there—did they see this picture taken?

A. Yes, sir.

Q. They were there during the entire time?

A. Yes, sir.

Q. And And those photographs were taken by Dr. Liddle?

A. Yes, sir.

Q. And were taken by him in the presence of all these physicians?

A. Yes, sir.

Q. What is your business, Mr. Williams—that is, what kind of life do you lead?

A. I am in the newspaper business here.

Q. Do you lead an active or sedentary life; I mean by that, are you constantly engaged in going, or spend your time sitting down?

A. I don't spend much time sitting down.

Q. You lead an active life, as I understand?

A. Yes, sir, I haven't had a physician with me in 10 years I don't reckon.

Q. You live in the open and a life of activity?

A. Yes, sir.

Cross-examination (nothing).

(Witness excused.)

344 Dr. JAMES W. HALL, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. Will you give your name to the stenographer, please?

A. James W. Hall.

Q. Where do you live?

A. I live in Chicago.

Q. What is your profession?

A. I am a surgeon.

Q. How long have you been engaged in the practice of surgery, doctor?

Q. I have been practicing medicine about 22 years. The first 9 or 10 years I did a general practice, both internal medicine and surgery practice. Since that time I have been doing general surgery, more particularly a surgery pertaining to personal injuries or accidents, or what is known in our profession as emergency surgery.

Q. Where were you born?

A. Huntsville, Alabama.

Q. How long did you live there?

A. My parents left there when I was an infant and went to Kentucky. I was raised there.

Q. Where were you educated?

A. At the University of Kentucky, literary education, and entered the medical department at Louisville, Kentucky and took my medical education.

Q. How long have you been engaged in the practice of surgery at Chicago?

345 A. I went to Chicago in '91; I have been engaged since then.

Q. I understand you to say you are engaged in what is known as emergency surgery?

A. Yes, sir.

Q. It would indicate to my mind—I will ask you whether or not it is correct, it is the service of surgery which is necessary in emergency cases, where people are injured?

A. Yes, sir, it refers more to accidents. In other words emergency surgery is that surgery which is made necessary by some accident, in contradistinction to surgery in cases of disease.

Q. What is meant by a surgeon, when they make an examination of a patient by symptoms which may be discovered, some of

which are described as being objective, and some of which are described as being subjective?

A. That is the two great divisions the symptoms are divided into, objective symptoms and subjective; did you want a definition?

Q. Yes, sir.

A. Objective symptoms are such symptoms as the surgeon can determine in spite of the patient; that is, using myself as an example, if I examine a patient and I am able to determine certain symptoms in spite of anything he does or says, or any voluntary manifestations he may make, that is an objective symptom. To illustrate: a man has his arm broken, and the bone is broken here (indicating) by taking hold of the bone and getting the false motion and sound by feeling the bone I can tell positively that the arm is broken, independent of anything that the patient does or

346 says; that is objective. A subjective symptom is one that the surgeon has to depend upon the patient for the complaints and action and manifestations. To illustrate; headache for instance is a subjective symptom, because the doctor can't look at the patient and tell whether or not he has a headache. Pain anywhere in the body is subjective, and depends on what the patient says. Movements of the body of the voluntary muscles are subjective, because they are under the control of the will. Speech—what a man says, is subjective, because it is under the control of the will. A question that very frequently comes up is the question of unconsciousness, where a person refuses to talk and assumes a state of unconsciousness; that is subjective and depends entirely upon the patient himself. I want to modify the question as to pain somewhat. We have a test known as Moncock's test, that consists of making pressure or irritating the part of which the patient complains. For instance, a patient claims he has a sore knee, and pressure is made on that sore knee that would naturally increase the pain and the pulse of the patient should go up several beats during that time, if the pain is genuine; if the pain is not genuine and the complaint is made where it really does not exist, that pressure on that sore spot would not increase the pulse beat. That is not entirely reliable, but it comes the nearest we have to making the pain objective..

Q. I will ask you to please give, in a general way, the structure of the human body, in such simple language as the jury 347 and I can understand—as to the structure of the spinal column and of the pelvis and the lower frame of the body?

A. Referring particularly to the bony parts?

Q. Yes sir.

A. To start with, the pelvis is the connecting link between the lower extremities and the body. It consists technically of 8 bones—as a matter of fact it is 4, because the two large bones on either side are so welded together, especially late in life, as to become one, so there is a large bone on either side of a large bone in the back that fits between those two large bones, and they are attached to that large bone in the back. In other words, the large pelvic bones on either side are united in the back by a large wedge shaped bone

which is the base of the spinal column. Underneath of these two side bones there are two sockets, and the upper end of the leg bone has a ball, and that ball fits into that socket on either side, making what is commonly known as the ball and socket joint where the hip sits in the side that forms the connecting link between the lower extremities and the body. On top of this large wedge bone in the back, which is itself a part of the spinal column, there are a number of other small bones, called segments, or pieces that go to make up the spinal column. These bones sit one on top of the other. They correspond very nicely and almost exactly to the back bone of a sheep, or the back bone of a hog—they are shaped almost like the human back bone. There is about 32 in number, and they sit one on top of the other, with a hole in them, and through that hole the spinal cord extends from the brain, and between each of these segments there is a joint, and that joint is moveable—that is why you are able to twist the body back and forth. It is like taking a lot of spools and stringing them on a string, and you can bend that string of spools around. That spinal column in addition, is supposed in the normal individual to be erect laterally; that is, supposed to be straight up and down from side to side, but from front backwards it is bent. That is why you are stooped a little bit in the shoulders, and it comes out again at the hips. Inside of that is the spinal cord; outside ligaments join those bones together, and strong muscles up and down the back bone. And in the pelvis—in this bucket shape that forms the pelvis, it is open in front and closed at the back. In other words, it is like a box with the top off and the front part of it is the top, and it is open in front and closed at the back. Inside of that pelvis, in the male, in the bladder in front, and back of the bladder is the rectum, or the bowels which lead to the exit of the body, and the intestines lie in the top of that bowl or frame, and around that is the abdominal walls, heavy muscles, and the side of that is protected by the heaviest and strongest muscles in the body. The pelvic bones are the largest and strongest and bound together the tightest of any bones in the body. In fact the pelvic organs have equal, if not greater protection than the brain, it is surrounded by almost a solid bone.

349 Q. Are the bones of the spinal column of the human body always regular and symmetrical?

A. No, sir, it is the exception to find them so in the ordinary individual, where they are ordinarily normal. There is a deviation or lack of symmetry, or the outline is not uniform.

Q. What are the causes of this lack of symmetry and uniformity?

A. There are numerous causes for it. Perhaps the most common is what is known as congenital condition, or the condition in which you are born. You are born with the spinal column not quite straight and uniform—that is the common condition. That is what is known as congenital condition, caused by birth, or before birth, in the womb. Early development, at work or play you may grow slightly crooked. Children at school that are inclined to lean over the bench a long time sometimes pull the spine out

of its regular position. Another cause is abnormal anatomical formation. Sometimes we have a piece of the vertebræ, or one of the spinal segments that is not fully developed, that sits on one side and therefore tilts it the other way, called anatomical anomaly. It may be caused by disease. Take hump backs—it is usually caused by some disease of the bones of the spine, where some of the bones decay and allows the back bone to double on itself. Other causes of irregularity of the spine is injury, or trauma; where the spinal column or bones have been actually fractured and broken and knocked out of place, which is a condition that does occur, in certain kinds of violence and accidents where violence has
 350 been applied direct to the spinal column.

Q. Doctor, is it possible to have a dislocation of the joints of the pelvis—I believe they call it the sacro-iliac joint?

A. Yes, sir.

Q. What would be necessary, by way of external force or violence, if it is done that way, to cause such a dislocation—how much?

A. To first understand a dislocation of the sacro-iliac joint, I had better carry my description of the pelvis a little further. This wedge shaped bone in the back, called the sacrum, the heaviest and strongest bone in the body, sits in between the two side bones, called the ilium, and this bone is called the sacrum. In describing the joint where they come together they call it the sacro-iliac joint. That is a peculiarly constructed joint. It is practically immovable—it is immovable after a certain age. The sides and edge of these bones are not smooth—they are corrugated in a measure. In between the edges of these bones there is a substance known as cartilage, which is rather thick. It forms an attachment and also a cushion to the edges of those bones. That is a long joint, an average perhaps of $3\frac{1}{2}$ or 4 inches, where these two bones come together. In front of that joint is a heavy strong ligament that passes from the ilium to the sacrum, just like lacing those two bones together; after this cartilage is in between and attached, then this ligament comes in
 351 front. There is a similar ligament back of that joint, called posterior ligaments. Hence that bone is mortised together and bound together by this cartilage, and in addition to that they are laced together by those ligaments that pass in front and also in the back. So, in order to dislocate that joint, and get that joint separated, you must necessarily have such violence as will force those two bones apart, and in doing that, in order to get it apart, it is necessary to tear this cartilage loose between the bones, and it is necessary to tear this front ligament loose. Those ligaments and attachments are so strong that even in the dissecting room we have to take a chisel and drive between those bones and cut those ligaments before we can get them apart; so it is almost impossible to separate those two bones, so the violence required to do it would be certainly of a severe character. It would have to be practically direct. It might be transmitted from the lower end of the sacrum up, and in my opinion no normal sacro-iliac joint was ever separated from a fracture. I don't believe it is possible. A fractured dislocation does occur in crushing violence, where the body is shoved or drawn together, as between two bumpers on a train—it may tear

that loose. In such violence as would dislocate that joint you would necessarily have marked external evidences, such as extreme swelling, laceration of the external parts, and extensive discoloration, showing.

Q. What would be the effect of such dislocation or separation at that joint on the individual, and what symptoms would be
352 evidenced in that case?

A. Usually death; that is, not from the actual separating of that joint, but the damage that is done to the pelvic organs—the things inside of that body cavity, unless a man has surgical relief right away, there would be hemorrhage, and probably death. At least, I would say it is a most serious injury, and there would be pronounced and prominent symptoms that would be immediate, and the person would require surgical attention within a very short time, or the case would be severe. Unless there was surgical attention you would have a deformity of the pelvis, one bone higher than the other and one leg shorter than the other, and there would be permanent symptoms there unless surgical attention had corrected the condition.

Q. Doctor, do you know George R. Williams, the plaintiff in this case?

A. Yes, sir.

Q. Have you ever had occasion to make a physical examination of that man?

A. Yes, sir.

Q. Where was that examination had and where did you see him?

A. I saw him in Omaha, Nebraska, on November 21, 1914.

Q. Did you go to Omaha, Nebraska for the purpose of making that examination?

A. Yes, sir.

Q. Who was present and assisting you in making the examination that was made?

A. I went there with the claim agent, or with somebody connected with the road—Mr. Crpp, and went to Dr. Lord's office in Omaha.

There—I don't know just what the staging of it was or who
353 I met first—but there was met Dr. Lord and Dr. Summers and Dr. Harris and Mr. Williams, and Mr. Copp was with us. The history was taken and the examination made in the presence of those gentlemen.

Q. As I understand you you made a physical examination of the man there at that time?

A. Yes, sir, we first took the history from him—that is, took his statement, and after getting the history, Dr. Lord, Dr. Summers and myself all asked him some questions as to the date of the accident, and his prior condition, and his subsequent condition, his age, place of residence, etc., and after getting that history we then had him go in Dr. Lord's private room and remove all his clothing, and we made a physical examination.

Q. As to that physical examination, I will ask you if you made a physical examination of his muscles?

A. Yes, sir.

Q. How did you find them—the upper extremities and the lower extremities?

A. I found Mr. Williams to have good muscular tone, both in the upper and lower extremities. The muscles were not flabby. He is not a fat man—rather inclined to be what is known as stringy muscles, but the tone was good—no flabby condition.

Q. In either his extremities or his body?

A. No, sir, of his extremities or his body.

Q. What results did you find from the examination of the joints of his body?

A. The joints were all in place; that is, no dislocations.
354 There was no limited motion of the joints. The joints of the upper extremities were complete, free and easy; the joints of the lower extremities, the movements were perfectly normal—no limitations. The joints at the back were present, normal, and had all the motions. I moved him forward and backward and to either side.

Q. Were there any evidences of abnormality in any of the bones of his body?

A. There was not, no, sir.

Q. How did you find his lungs?

A. Sound and normal, and respiration normal.

Q. How did you find his chest expansion?

A. His chest expansion was I think $3\frac{1}{2}$ inches. I am stating that entirely from memory.

Q. Well, is that practically normal?

A. Normal for a man of his size.

Q. Did you make an examination of his heart; if so, what condition did you find that in?

A. I found his heart normal, and the rythm normal in beats and uniform in action, and normal in size, so far as I was able to outline it by a physical examination.

Q. Did you examine the reflexes of his body?

A. Yes, sir.

Q. What condition did you find as to that?

A. I found all his reflexes present; that is the deep reflexes of upper and lower extremities all present. The tendon reflexes were present and slightly brisk, but not abnormally so; that is, a tap on the knee, you would get a little more kick than perhaps is in
355 the average individual, but that varies greatly in different men, and in the same man at different times. If you are a normal man, when exhausted and tired you will get a quicker response than one who is fresh and vigorous in the morning.

Q. What examination and what discovery did you make as to the man's sensation?

A. I tested his sensation first with a nail file, in different parts of his body. I found at time I would pass over him and got no response. During that time some one handed me a pin and I made some tests with the pin, and found at different times he would give no response, and at other times he did give response.

Q. What evidence, if any, did you find of what is termed the subjective symptom of anesthesia in his lower limbs?

A. I found none, with these qualifications: at times when I would

stick this man with a pin in the skin, and he was looking at me, he would not move; whenever I attracted his attention to other parts of his body, feeling his pulse or his heart, and then stick his leg with a pin he would give the normal muscular reaction and movement.

Q. What other evidences of that fact were developed during the progress of that examination?

A. On the question of pain. Mr. Williams, during the examination complained of quite severe pain when I was examining his back, that is, to the spinal column; running my hands up and down his back he would pull away and claim it hurt him very severely, and I was unable to make a very careful examination of his back at first.

356 Subsequently we were examining his kidneys through his back, and talking to him at the same time about his kidney trouble, and I made very severe pressure in the same region and he made no complaint of the pain whatever; I made too one of those tests—the Moncock's test—while pressing on his back for his kidneys with one hand I felt his pulse, and had my watch, and there was no accelerated pulse, in so far as that test is genuine—I am frank to say I don't think it is quite positive, but there was no increase in pulse, and he made no complaint of his back when I examined for the kidneys and was discussing the kidney proposition, but when I was examining his back and discussing his back with him he did make complaint of his back.

Q. During the course of that examination did you step on him, or do him any injury of that character?

A. I did not do him any injury. I think I gave him some pain. I was listening to his lungs—he was standing up naked and barefooted, and I had my ear to his chest, and stepped around him and caught the thin part of his foot with my foot and apparently caused him a good deal of pain, but evidently did him no injury.

Q. How did you find the other functions of his body—his liver, stomach, kidneys and intestines?

A. I found his kidneys in place. In so far as you can determine by an external examination, his liver and stomach were in proper place. There was certainly no dropping down of the organs in the abdominal cavity abnormally. As far as could be determined by the examination, all the contents of the abdomen—the stomach,
357 liver and kidneys and large intestines were in place. At least I was not able to detect their being out of place.

Q. There is a test of some kind, which is inquired about frequently, about the sole of the foot test. What is that. Do you know of any special test of that character?

A. I think I know what you have in mind. It is what is known as Babinski's test for a cord lesion. Where there has been a cord lesion, most common in disease, we get reflex action on the bottom of the foot—called Babinski's sign—I guess he is a Pole—Stroking the bottom of the foot normally, if you are at all sensitive or ticklish, you will draw your toes down, like a crow lighting on a limb—that is the normal. In certain cord lesions, where there is a real affection of the cord and the sensations are really lost more or less, just the opposite of that is true—you tickle the bottom of the foot and the

toes will go up—you can't draw them down. I have no doubt that is what you have in mind.

Q. Q. Did you apply that test?

A. Yes, sir.

Q. What was the result?

A. The result was negative; that is, Babinski's sign was not present. He had the normal contraction of the toes.

Q. After having completed the physical examination of the man, as far as possible to make it in that way, what then was your discovery and the result of that examination as to his physical condition—was it normal or abnormal, or how?

A. I found a slightly abnormal condition in another part of
358 the examination that has not been described. I made a rectal examination of this man and found that what is known as the prostate gland, right at the neck of the bladder, was slightly enlarged, and apparently sore and sensitive. With that exception, that is the only abnormal condition I found. That is a condition that is very common in men of a certain age, and in young men who are not quite normal in their genital organs, and in his case it was not particularly bad—somewhat enlarged and somewhat sensitive. Other than that I found nothing abnormal in the man at all, objectively. Of course, it is abnormal to complain of pain and not to move when stuck with a pin when looking at him, but that is not physical—that is mental—

Q. What other examination did you make after completing the physical examination?

A. We made radiograph or x-ray examination in Dr. Lord's laboratory.

Q. In what way was that examination had; give us the benefit of that?

A. That examination was had by placing this man, as is ordinary, in a position to take a picture of his pelvis and the surrounding bony structures.

Q. I would like to ask you first what experience have you had in the matter of taking x-ray photographs?

A. Well, rather extensive. I have taken a great many of them myself. I have hundreds, and might be thousands of them, and have observed a great many taken I didn't take myself. I
359 have a machine in my office and have a regular operator and when he is there I don't operate it myself, but I watch him do it. In a great many cases I take it myself. My experience in x-ray work has been rather extensive, because it is an essential examination in emergency surgery. The uniform practice in my office is to have pictures done—it has been rather extensive in that line. This man was taken into the laboratory from the private room and placed on a table made for that purpose, on his back, and the plate was placed under the man on the table. The plate is put down and the man laid down with his but- right over that plate, and he was placed at right angles to the tube and the tube was swung over him, and that was set at an angle to throw the rays straight down through his pelvis and a very small amount of the spinal column—the other

was the pelvis and a considerable amount of the spinal column above the pelvis.

Q. Will you examine these two pictures in this box here and state whether those are the pictures which you took?

A. This the second picture we took in Dr. Lord's office in Omaha (showing), and this is the first one (showing).

Q. Doctor, I will ask you, in taking an x-ray photograph of that portion of a man's body with a view to ascertaining its condition, and whether it is in a normal or abnormal condition, what is the proper position for the man to be in and for the instrument to be in?

A. The one way you have of getting the entire anatomical structure complete in a picture, is placing the man on his back
360 and throw the x-ray at right angles to the opening in front.

In other words, if you want to get the whole bottom of a box, take the lid off—suppose it has some knot holes and you want to show all those defects, you must look directly into that box. You can't tilt it to one side and obstruct the range of vision. The operation of the x-ray would be exactly like the range of your vision. Take a tube and if you look straight into it you can see the wall but turn it to one side and you can only see down one side—if you take it straight you get all the anatomy in their normal relation to each other.

Q. As I understand, you say that is the proper way?

A. That is the only way it can be taken to show the normal structures in their normal relation to each other.

Q. What was the result of that x-ray examination, and what did it develop as to the then condition of the man Williams, who was being examined?

A. It confirmed and corroborated our physical examination that he was normal in all regards, especially in the pelvis, where we took the pictures. No dislocation, no fracture and no deformity of this man's pelvis at all. The pelvis was normal at that time.

Q. State whether or not at that time there was any separation between the bones of the body at the point which is denominated the sacro-iliac joint?

A. The sacro-iliac joint in Mr. Williams at the time I examined him, was shown both by the physical and x-ray examination
361 to be normal, and to have nothing but the normal separation.

There is a normal separation in this joint, because of the cartilage between them. In taking an x-ray picture, on account of that cartilage not being as dense as bone, the rays pass through it and it looks like a crack between the bones, when as a matter of fact it is the cartilage. It is natural and normal there, and it was present in him in the normal way on both sides.

Q. Was Dr. Harris of Omaha present at the time of all these examinations?

A. Yes, sir.

Q. As a representative of Mr. Williams?

A. I so understood at the time. That was my understanding; he had been treating Mr. Williams and had taken some pictures. I got that understanding from him.

Q. There was a picture, as I understand it from the testimony of some of the other physicians in the case—there was an x-ray photograph presented there by Dr. Harris as being an x-ray photograph which he had taken of his body?

A. Yes, sir, that is true.

Q. Examine that photograph, which has been filed in this case as Exhibit "A" to the deposition of Dr. Harris, (handing witness plate) and state whether or not that is the photograph which was shown you at the time as being a photograph taken by him?

A. I couldn't state positively it is—it looks like the one. I mean

I wouldn't want to trust my memory as recognizing a picture

362 I saw but one time, because there are so many so similar.

This is a picture of the pelvic bones and pelvis, on the same size plate, and looks like the one I saw there, and shows the same thing I saw there—

It is agreed by counsel that this is the same picture.

Q. I will ask you whether or not that picture shows the condition of the pelvic bones and the sacrum of that man you were examining at that time?

A. Yes, sir, it does.

Q. What does it apparently show as to a separation or dislocation, or anything like that?

A. You want to know what abnormal thing it shows?

Q. Yes.

A. It shows the normal pelvis, both as to pelvic bones and back bone, as far as the back bone is shown, and down as far as the pelvis is shown. The pelvis is not quite covered in this picture—a couple of little bones on one side is not covered by the rays, but it is only the outside bones. That shows a normal pelvis.

Q. Taken from what angle?

A. Taken from an angle with the pelvis tilted from right to left, with the rays going in—no, it is taken from left to right, with the rays going in in this direction missing the *edge* of this bone, and missing this joint partially, and going directly into the other joint, which would show in this picture in an inverted way, and show the right sacro-iliac joint. That is the picture of a normal pelvis, taken with the pelvis tilted, and the x-rays turned to the side of the opening.

363 Q. I will ask you whether or not a picture can be taken of a perfectly normal man, who never had any injury whatever to his back of any kind, that would show the same situation as is shown by that picture?

A. This is that kind of picture. This man never had an injury there. If he has he has completely recovered and it shows normal now. You can take a normal man who never had an injury, who is perfectly normal, and take this kind of picture by turning the rays into the pelvis in that shape. A matter I have done several times myself.

Q. Have you done that thing?

A. Yes, sir.

Q. How many times have you done it?

A. I saw this picture in Omaha and was so convinced that this was a fake that I came home and did some work on several young men about the age of this man. I have 5 or 6 young *codtors* in my office, running from 26 to 30 years old—normal healthy fellows, some almost athletic, and I took pictures of them with the pelvis tilted, which I have here with me, showing exactly the same thing this picture shows. A normal pelvis with the rays turned in to one side.

Q. I will ask you whether or not you have taken a picture under those same conditions of a normal man in the city of Jackson, since you came here?

A. I witnessed one taken. I was present and helped place him on the table and place the plate under him, and adjusted the
364 tube over him and stood present while a doctor here in Jackson took the picture—

Q. Was that picture made by a Dr. Liddle in this city?

A. I think that was his name. I never met him till yesterday evening. I adjusted the man and the tube and the range, and then Dr. Liddle pressed the button and the picture was taken in my presence.

Q. That may was Mr. E. K. Williams?

A. He was introduced to me as such.

Q. The man that was in here this morning—he was the young man that testified this morning?

A. Yes, sir.

Q. Who was present besides yourself and Dr. Liddle at the time of the taking of that picture?

A. Mr. Williams, the subject, and two local doctors, Dr. Galloway and Dr. McLean, were present at the time these pictures were taken in Dr. Liddle's office.

Q. I understand you took the picture of Mr. Williams by Dr. Liddle, in the presence of Dr. Galloway and Dr. McLean, no longer than last night?

A. Last night about 9 o'clock.

Q. I will ask you whether or not those pictures are here, and what that picture shows with reference to the situation which is developed in the picture you have before you, which is said to be a picture of Mr. Williams, the plaintiff?

A. That picture is here—I saw it just before I came on the stand. I shows a little more than this picture, that is, I tilted the pelvis a little more and have a worse condition than this. In that
365 picture I had the pelvis tilted as far as I could to catch the joint, and the result is I have quite a break or lesion. In other words, the picture I took last night of a normal man shows a worse deformity than this picture shows.

Q. Will you please get that picture and get it in here and lets identify it?

(Witness her- gets picture.)

Q. Will you examine this picture—you took two I believe?

A. Yes, sir.

Q. State whether or not those are the pictures of Mr. Earl Wil-

liams, the young man you have referred to, taken as you say (handing witness pictures)?

A. Yes, sir, this is the first picture we took, and this picture was taken the same way the picture identified here was taken, except—

Q. Will you exhibit that to the jury?

A. The light is very bad here—it is almost impossible to do it. (The electric lights are here turned on in the building.) This shows fairly well now, (exhibiting plate to the jury). You see this shadow here. It is not good in this light, but here is a complete separation apparently in this joint, coming around to this point, which is the normal sacro-iliac joint on that side. On this side you will see this circle of bone is uninterrupted, where there should be a joint there and is a joint there, and the rays turned in that direction miss that joint entirely. The joint on the left side is shown to be open in its normal

condition. The other picture is normal. It shows all the
366 anatomical structure in the proper relation. I took this picture to confirm the statement of Mr. Williams that he had never had an injury. This shows the complete normal pelvis. Here is the sacro-iliac joint on this side and on this side. Here is the ilium and here is the coccyx, and the opening in front here, which shows that Mr. Williams was normal at the time this deformed picture was taken.

Q. I understand from you, doctor, that you took a perfectly normal man, Mr. Earl Williams here, and made a picture at an angle at which that picture was taken, which is Exhibit "A" to Dr. Harris' testimony, and it shows a greater abnormality in Mr. Earl Williams than is shown by that picture of Mr. Geo. R. Williams?

A. Yes, that is true. The picture I took last night shows a greater opening of the joint on one side than the picture that was presented to me here as having been taken in Omaha, and does not show the opening on the other side because the rays of the machine didn't reach it.

Q. The picture, as I understand, which was taken of Mr. Earl Williams last night, taken directly in front shows he is a normal man and that the pelvic bones are all in place and in the normal condition?

A. They are not only normal in structure, but normal in relation to each other. I took that picture in order to determine for myself, independent of any statement he made, that his pelvis was in a normal condition.

Q. I will ask you as to what was shown by a proper picture taken of Mr. George R. Williams by you at Omaha, when
367 that picture was taken from the front just as it was with Earl Williams?

A. It shows exactly the same as my picture of the person I took last night. These pictures taken in Dr. Lord's office are normal pictures of a normal person, and show a normal pelvis, the same as the picture taken last night in the normal way.

(These two pictures of Mr. E. K. Williams are here introduced in evidence, and marked Exhibits "A" and "B" to testimony of Dr. Hall.)

Q. After having made, as you have indicated, a careful and critical physical examination and x-ray examination of Mr. George R. Williams, on November 21, 1914, at Omaha, state whether the symptoms, or subjective symptoms complained of by him on that occasion were real and existed in fact, and whether they were permanent or temporary in character?

A. I formed an opinion, yes, sir.

Q. What was it?

A. I could find nothing in my examination, either physical or x-ray, that would in any way account for his complaints. I could find no reason for that man's being lame; I could find no reason for his complaint of loss of sensation, and could find no reason for the complaints in the back, and on account of the inconsistent complaints he made at the time I was examining him I formed the opinion that the symptoms were not genuine; that the man was not really suffering pain, he really could feel, and that he didn't have any pain in his back.

368 Q. Then what, in your judgment, would bring about and co-nteract the situation as he then presented himself to you. What would be necessary—what would bring about a change in his mental attitude or condition, which would change the situation or produce relief?

A. I don't know whether this is wholly medical or not; you can relieve this man by destroying the motive symptoms, if these are motive symptoms, which I believe them to be, whenever the motives are destroyed I believe he will get well. I don't know why he is having those symptoms.

Q. I will ask you to state, from all examinations you made in conjunction with your associates in Omaha, as to whether or not this man has any serious physical injury or not?

A. I would judge he has not. I know he has no physical condition abnormal. I know his junctional condition cannot be accounted for by any physical findings—there are either neuroses or actual cord lesions, and there is only one other thing left, and that is actual motive symptoms.

Q. What is your knowledge and experience, of the ability of people either in fact or to assume what is called anesthesia, or lack of sensation in the lower limbs?

Q. Well, that is not an uncommon thing at all. You may have anesthesia, and do have it, in a great many diseases of the spinal column, and a great many injuries to the spinal column, where it is actually injured; you may also have it from pure neurosis, that is in hysteric paralysis where the sensation is lost. In hysteric
369 paralysis the anatomy is well marked and drawn out of any relation to nerve distribution. In other words you have a hysterical leg, which is common in women, called stocking paralysis, which comes about where the old garter used to come around the knee, and surrounding the knee. That is purely a junctional or hysterical proposition. It does exist in a great many hysterical people. The other kind of loss of sensation you have is from cord lesion, and in that case it will follow a certain nerve distribution;

it will be on one side of the leg or the other, or involve a certain group of muscles and not others, which may be because of the fact that when the nerves leave the spinal column that go to certain parts of the body, from a nerve center, and if that center is disturbed you will have lost sensation in that point. In that kind of a case, where there is an actual lesion of the nerves, if you had loss of sensation you would also have disturbed nutrition and get marked atrophy at the point where he couldn't feel—it would be shrunk and shriveled and would be manifest to the doctor examining him. That is why I concluded there was no loss of sensation, because he had neither the hysterical character of neurosis or the organic character, and those are the only three things; one is hysteria, another is loss of sensation from nerve lesion, and the other is feigning or malingering, or standing paid without a manifestation of pain, which can be done, and has been done. In this case I examined this man Williams, and there was no hysterical

370 paralysis, there was no organic paralysis, and there is only one other kind it could be.

Q. What is your deliberate judgment, after making all the tests known to you?

A. Yes, sir.

(Court here adjourned till 2.30 P. M., at which time court convened, and the examination of Dr. Hall was continued as follows.)

By Mr. Wells:

Q. Doctor, there is one or two other questions I want to ask you. You testified this morning that you were engaged in the practice of surgery in the City of Chicago, and engaged in what is known as the emergency service branch of that profession?

A. Yes, sir.

Q. And that that indicated that you were frequently called in cases where it was necessary to be called quickly, and in accident cases especially?

A. Yes, sir.

Q. Your services are largely confined, as I understand, to that kind of business—that is your specialty?

A. Almost wholly, yes, sir.

Q. Have you any direct connection with the Illinois Central railroad Company?

A. I have not, sir.

Q. Have you any more interest or connection with the Illinois Central Railroad company or the Yazoo & Mississippi Valley railroad company, than you have with any other client that you might have?

371 A. Not as much as I have with some. There are two or three companies in Chicago where they send all their emergency surgery to me. In that sense I am more closely connected—I am not any way connected with the Illinois Central, and never have been.

Q. The fact is, on account of that practice you have testified and do testify in a great many cases of that character?

A. Yes, sir, a great many accident cases that I treat are afterwards litigated, and I am called into court to testify rather frequently, and frequently by the injured man and frequently by the defendant, to testify to the facts I find. That is not all; on account of my special line of work, emergency surgery, a great many cases are referred to me for examination long after the accident happens, to give an opinion as to the result of the accident, and in that way I am sometimes called into court.

Q. I will ask you whether or not you are called from time to time to testify against the I. C. Railroad company in emergency cases and accidents, by a plaintiff in a suit?

A. Yes, sir, I have been called by a plaintiff who was prosecuting a suit against this company, where I examined him and went on the stand and gave an opinion at his instance, and called by him.

Q. So that is your attitude in this case; you are called to testify as an expert surgeon on these cases from time to time by various and sundry people, and by plaintiffs and defendants. You have no direct connection of any kind with the Illinois Central railroad company?

A. I have no connection with them, and no interest in
372 them any further than the fact that they occasionally send me a case to be examined, and once or twice—and I am not clear about that—I think a couple of injured parties injured on that line fell into my hands for treatment. I have no interest in them except as a customer of mine and they pay me for my services the same as any other client, private individual or corporation.

Q. Do you know the nature and character of this instrument here?

A. That is a shadow box.

Q. Do you think that would show the pictures that were exhibited here this morning any better to the jury than the opportunities were had with the light we had at that time?

A. If it is operating all right.

Q. Take the picture marked Exhibit A to the testimony of Dr. Harris, of Omaha.

A. (Taking picture and placing it in shadow box.) There is the picture that was taken at an indirect angle.

Q. Explain it to the jury?

A. This is the spinal column, and those segments or notches you see are the joints between the different vertebra. This white spot is the bone itself. Starting from here down is the large sacrum. That sacrum is somewhat obscured by the pelvic bones in the picture, necessarily. On either side this large sacrum bone joins the pelvic bones. This picture is taken at an angle from left to right, and on that account shows a separation at this point of the sacro-iliac joint very distinctly, which is a normal and natural
373 condition. It shows it very slightly on this side, right in here.

This is a part of the sacrum here, and one of the processes shaded, by the picture being taken the other way. In other words, if the angle had been right above and taken from the open door,

it would show the same on either side. In this case it does not show it because of the angle it is taken at.

Q. The picture you have just testified about is the picture of Mr. George R. Williams, the plaintiff in this case, which was presented to you as an x-ray picture taken of him and admitted to be such by a doctor of Omaha?

A. Yes, sir.

Q. Put in the same machine the picture taken of Mr. Earl Williams last night, and tell what that shows?

A. (Placing picture in shadow box.) Here is the normal picture taken last night in Dr. Liddle's office. This picture is taken straight and correct, showing the normal pelvis of the human body. The spinal column is straight, the sacro-iliac joint showing here and showing equally on this side.

Q. As I understand, that is the picture taken directly in front and showing the normal condition of the man?

A. Yes, sir.

Q. Now, then, please take that out and put in the picture of the same man that was taken at this angle?

A. (Placing the other picture of Earl Williams in shadow box.) This picture is slightly overdeveloped, and on that account is blurred to some extent, and the outline is not quite as good

374 as in the other picture, so it is not quite as prominent—the blurring occurs on this side. Here is a picture taken with the body tilted from left to right, with the rays turned in from the left, showing a complete opening of the sacro-iliac joint, $\frac{3}{8}$ of an inch, and does not show it at all on the other side. That is a picture of the same man.

Q. That is a picture of Mr. Earl Williams, a man right here in Jackson, and whose picture was taken last night?

A. Yes sir.

Q. As compared with the picture presented to you as being the picture of Mr. George Williams of Omaha, how does that separation, or apparent separation of the joint there compare with the picture shown you at Omaha?

A. The separation appears greater in this case than it does in that picture.

Q. In other words, the picture of an absolutely normal man, who testified that he never had an injury at all, which is now exhibited by you, shows a greater abnormality and a greater separation than is shown by the picture which was supposed to have been taken of George Williams, and exhibited to you at Omaha.

A. That is true, because the distortion is greater.

Q. I will ask you to take out that picture and put in the picture that was taken by you, Dr. Lord and Dr. Summers at Omaha, of Mr. George R. Williams, the plaintiff in this case, and which was made an exhibit to Dr. Lord's testimony; there are two here—

A. This is the first picture (showing).

375 Q. Well, put that in.

A. That is a very much better picture than the one we have this morning. This shows the picture of a normal pelvis, taken

in the normal and correct way to show the relation of one bone to the other. It shows the sacrum in between the large bones on either side. It shows the sacro-iliac joint on this side very distinctly, and also on this side in an equal way.

Q. That is the picture of George R. Williams, the plaintiff in this case, taken by you and Dr. Lord and Dr. Summers, in the presence of this Dr. Harris, at Omaha?

A. Yes, sir, that is true. That is a normal picture, showing all the normal relations of the bone.

Cross-examination by Mr. Harrington:

Q. When did you begin to practice medicine?

A. In 1891, the latter part.

Q. And where at?

A. Bloomington, Illinois; that is, after leaving the hospital I practiced there a while.

Q. Did you engage just in the general practice?

A. Yes, sir.

Q. Did you get to do a little surgery work?

A. Yes, I did surgery work from the time I graduated. In fact I took a course in surgery while I was in school, and started in doing whatever surgery the people would let me do.

Q. The Illinois Central ran into Bloomington?

A. Yes, sir.

376 Q. And in your early years you were a witness against them a couple of times?

A. Yes, sir, once early, and only subsequently.

Q. While you were at Bloomington did you testify against the Central in a case?

A. Yes, sir, I testified for a plaintiff suing the Illinois Central.

Q. How many years ago was that?

A. I don't remember the date, but it was early after I started to practice—probably '94 or '95.

Q. When did you leave Bloomington?

A. 1901.

Q. Where did you go to?

A. Chicago.

Q. During the time you lived at Bloomington, had you been retained by the Illinois Central as an expert?

A. No, sir.

Q. Had you ever testified for them before you left Bloomington?

A. I am not quite sure about that—I may or may not have—I don't remember.

Q. Before you left Bloomington had you become engaged to some extent as an expert witness?

A. Well, only in the sense that I was called into court occasionally in surgical cases. I think practically in all cases where I treated or examined the cases.

Q. In some cases you were called by the traction company weren't you?

A. Not in Bloomington.

377 Q. Where was your first experience as an expert witness for a traction company?

A. I think in Chicago. No, I was called once from Bloomington to Peoria in a street car case.

Q. For the street car company?

A. No, sir, for the plaintiff.

Q. Was he a man you treated?

A. No, I was called purely as an expert; that is, in the sense that I had not treated or examined him. They called me for an opinion on a phy-othetical question.

Q. Since you have been in Chicago you have been doing largely emergency work?

A. Almost wholly.

Q. Of course a man or a woman that was sick, and would go to Chicago for an operation, they wouldn't go to you?

A. If they did I would send them somewhere else.

Q. When were you last a witness against the Illinois Central railroad company?

A. You mean in the sense that I was called by a plaintiff?

Q. Yes, sir.

A. I think 7 or 8 years ago—I don't remember the date—since I was in Chicago.

Q. When were you last a witness for the Illinois Central?

A. About three weeks ago, was the last time.

Q. What state were you called as an expert witness by the Illinois Central company?

A. In your state, Nebraska.

Q. By the way, doctor, would you mind telling us what you charged them for your services in going to Nebraska and
378 testifying in that case?

A. I have no real disinclination to do it, except that I think I didn't charge them enough.

Q. How much did you charge them?

A. I really don't remember that. I know I haven't been paid yet.

Q. How much did you charge them?

A. I would be glad to tell you, but I don't remember, because I don't remember how long I was gone.

Q. How much a day?

A. \$100.00 a day.

Q. And your expenses?

A. For the time I was gone, and I don't remember how long it was. I charged them for my time while I was out of the city.

Q. That was the case of Ruth McHenry Morrison?

A. I think that was the style of the case. You perhaps remember it better than I.

Q. You were an expert witness against that woman in that case?

A. No, sir.

Q. You testified as an expert for the company?

A. Yes, sir.

Q. Had you ever seen that woman before you reached the court room?

A. Not to my knowledge.

Q. Up to now have you ever examined her body?

A. No, you wouldn't let me.

Q. You simply went on as a pure expert, that is all?

379 A. Well, in the sense that I had not treated her or examined her, and went on and gave an opinion, that is true.

Q. There was another surgeon we had permitted to examine her for the Illinois Central?

A. Yes, sir.

Q. We permitted a surgeon at Council Bluffs to examine her, but I refused flat-footed to let you examine her?

A. That is only hearsay—I understand that is true.

Q. When before that, were you a witness for the Illinois Central railroad company?

A. I don't remember, but quite a while. Several months at least.

Q. How many times have you been employed in such capacity by the Illinois Central?

A. That I couldn't tell you.

Q. Can you tell us within 20 or 10 times?

A. Yes, 20 would more than cover all of it—cover a period of 15 or 16 years.

Q. In how many different states have you testified as an expert witness for the Illinois Central railroad company?

A. Three I guess. I don't keep a very close count of that. I have been called in Chicago, in Illinois; I have been called to Iowa, and called out in the case that you tried in Nebraska, and then down here.

Q. Doctor, do you know the B. & O. Railroad?

A. I know about it in the sense that I have had some rough rides over it.

Q. Have you had any relations with it?

A. Yes, I have had cases in which the B. & O. was a party.

380 Q. After you testified for them a couple of times did you testify against them?

A. I testified in a case for the plaintiff about three months ago, where the B. & O. was defendant.

Q. Before that you had some trouble about some of your pay with them?

A. No, sir.

Q. How many times have you testified for them?

A. Very few, probably 2 or 3 times.

Q. And in what states?

A. In Chicago.

Q. Doctor, have you ever been a witness for the Chicago, Burlington & Quincy?

A. Yes, sir.

Q. In what states?

A. I don't remember that I have every been out of Chicago for

them. I know I have had cases called by the plaintiff against them. I don't remember to have ever been out of Chicago for them.

Q. Were you ever to St. Louis for them?

A. No.

Q. Have you been a witness for the Chicago and East Illinois railroad company?

A. Yes, sir.

Q. In what states?

Q. Illinois and Indiana.

Q. Have you been a witness for the Big 4 as an expert?

A. I have been called by the Big 4. I was their local surgeon at Bloomington. I have been in court for them.

381 Q. You were their surgeon at Bloomington?

A. I was local surgeon.

Q. In how many states have you testified as an expert witness for the Big 4?

A. Never only in Illinois.

Q. Have you been an expert witness for the Pennsylvania railroad?

A. Yes, sir.

Q. In what different states?

A. Illinois and Ohio.

Q. Have you been a witness for the Chicago & Northwestern railroad?

A. I don't remember. I think I have been called by them—I am acquainted with them.

Q. In what states?

A. In Chicago if at all—I am not sure.

Q. Have you been an expert witness for the Minneapolis and St. Louis Railroad?

A. No.

Q. Have you been to St. Paul, Minnesota as an expert?

A. I never testified, I have been there twice.

Q. For what purpose?

A. In a law suit, but I was not called.

Q. For what company?

A. Chicago, Milwaukee & St. Paul.

Q. What states have you been an expert witness for the Chicago, Milwaukee & St. Paul?

A. Only in Chicago, in so far as I have taken the stand for them.

382 Q. Have you been a witness for the Lake Shore?

A. I don't remember.

Q. Have you been a witness for the Michigan Central?

A. No, sir.

Q. Have you for the L. & N.?

A. I don't think I have ever been in court for them; I have done some work in my office for them.

Q. You have had some of their money?

A. I probably did if I did work for them.

Q. Have you been a witness as an expert for the Wabash?

A. Yes, sir.

Q. In what different states?

A. Chicago and Ohio.

Q. Have you been a witness either for the Missouri Pacific or the Iron Mountain?

A. I don't know—

Q. Doctor, do you have much time to do surgery, trotting over all these states as an expert?

A. Yes, sir, I have a lot of time. I am never called by solicitation—I have no agents out looking for business. I simply go where I am called.

Q. Have you been an expert for the Ice Company at Chicago?

A. No, sir.

Q. At any time—didn't you testify in the Morrison case that you had been?

A. No, sir—to put you right, I testified there that I had done surgery for the Consumers Company, but never called into court.

383 Q. You had their money though. Can you think of a few more corporations whose money you have had?

A. You, you mean in the sense, corporations that have paid me money for treating their employees?

Q. Yes, as an expert either.

A. The Chicago City Railroad, elevated railroad, the packing companies, international Harvester Company, and Barber Asphalt Company.

Q. By the way, have you read up some law to qualify yourself as an expert?

A. No, sir.

Q. Have you read what is known as medical jurisprudence?

A. Yes, sir, I taught it a number of years.

Q. So you are posted on medical jurisprudence?

A. Yes sir.

Q. Of course, that helps qualify you as an expert?

A. No, sir.

Q. You think it doesn't give you any knowledge of law at all?

A. Yes, but it doesn't qualify a man to testify on a medical or surgical proposition. My understanding is that the lawyers are supposed to know the law—some of them unfortunately have not studied it very much.

Q. But you have studied it?

A. Yes, sir.

Q. And it was by reason of your experience on the witness stand that you were called in this case to Omaha?

A. I couldn't tell you, you will have to ask the road.

Q. You had never seen Williams, had you?

A. Not that I know of.

384 Q. You never treated him before or since?

A. I never did treat him.

Q. Now you did find some evidence of anesthesia there, didn't you?

A. No, sir.

Q. Well, did you find what appeared to be anesthesia?

A. On first testing, yes, sir.

Q. Were you sufficiently convinced right on that examination, to find some way of explaining it besides some injury to his back?

A. No, sir.

Q. You swear you didn't make any tests to ascertain whether the anesthesia you found there didn't come from somewhere else. Do you say right in that consultation room you didn't say there was evidence of anesthesia there, and you must see whether you could trace it to something besides his back?

A. That is not true.

Q. Did you make the blood tests?

A. No, sir.

Q. Did you take samples, or did anyone in your presence take samples?

A. Yes, sir, samples were taken in Dr. Lord's office.

Q. What were they taken for?

A. For an analysis.

Q. For what purpose?

A. To see if there was anything the matter with the blood.

Q. They were taken to see if he had syphilis?

A. No, sir.

385 Q. Wasn't that the main purpose?

A. No, sir.

Q. Wasn't it one purpose?

A. An analysis of the blood is always made to see if there is anything abnormal in the blood. An examination of the blood is one way of telling whether or not a man has syphilis, but in view of the history of this case there was no evidence of this man ever having syphilis; there was evidences of his having another venereal disease—

Q. But you found no syphilis?

A. I didn't.

Q. The blood tests didn't show any syphilis?

A. I didn't make it, and wouldn't expect it to show syphilis, and my information is it did not show it. I didn't think this man had syphilis.

Q. But if he had syphilis, that might easily be the cause of anesthesia?

A. If he had syphilis that had so invaded itself into the system, that had destroyed some of the tissues, and there was objective signs of that syphilis, as a result of that syphilis you might get anesthesia.

Q. Anesthesia may be traced to syphilis?

A. On, yes, in a great many cases of syphilis there is anesthesia frequently, and paralysis of the lower extremities in syphilis.

Q. Didn't you take that blood test to see if you couldn't explain this anesthesia by saying it was syphilis?

A. No, sir, not at all—I will tell you what we did, if you want to know—

386 Q. Was that one of the purposes?

A. No, I didn't suspicion that this man had syphilis at all at that time, and I have not now.

Q. Did you ascertain whether he had been losing in weight or gaining?

A. Only in the sense that we asked him about it.

Q. What did he tell you what his weight had been?

A. It is purely a matter of memory—I am sure he told me he had lost weight—I can't tell exactly—

Q. You found he weighed just 136 pounds?

A. I am not sure we weighed him—I don't remember that point. I imagine he would weigh about that much—I would guess the man as he sits there, about 136 to 140 pounds.

Q. May a man have anesthesia, and still have feeling a certain distance below the skin.

A. I think so. There is more pain in the skin than anywhere—practically little pain in the muscles and tissues; pain comes from the skin, but I can imagine a case that would have anesthesia of the skin and retain the pain in the muscles—what pain there is there; there is very little pain in the muscles.

Q. May a man have anesthesia in the skin and right under it, absolutely no feeling, and go deeper and he has feeling?

A. No, I don't think so.

Q. Isn't that true in distinguishing partial and total paralysis?

A. No, that is not a factor in determining paralysis at all.

Q. If he had no feeling clear in beyond, that would mean paralysis?

387 A. No.

Q. It would mean a very bad case of anesthesia?

A. No, it would mean he had anesthesia in the skin, and the sensation of the muscles so slight he wouldn't notice it.

Q. Has he any feeling in paralysis?

A. It depends on what kind of paralysis he has; if he has sensory paralysis he would not have any feeling; he may have motor paralysis and still retain his feeling—you may lack of ability to move your arm and still have perfect sensation in your hand and arm.

Q. Anesthesia ordinarily only affects the skin, as a rule?

A. I would say you are correct about that, because that is the only place there is any feeling of any consequence—mostly in the skin, and then if you strikes sensory nerve in cutting or pricking, or nerve trunk, you are liable to get rather severe pain.

Q. Notwithstanding that fact, if a man has real anesthesia it affects his ability to move about, doesn't it?

A. If he has anesthesia of the skin he would, yes, and also a man with anesthesia of the legs any length of time, it is a very common occurrence to bump against something and get rather a severe bruise without knowing it. I don't think I ever examined a man who had anesthesia any length of time and didn't find sores on him. That is one of the first laws of nature, is the sensation you get from touch, and a man that hasn't any feeling in his skin will injure himself and not know it. I don't know that I ever examined a case where

anesthesia was of any length standing that didn't have some evidence of injury.

388 Q. Did you examine the sacrum?

A. Yes, sir.

Q. Is the sacrum part of the pelvis, or separate from the pelvis?

A. It is part of the pelvis, but is a separate bone—part of it in the sense that it makes one wall; it is the back wall of the pelvis.

Q. Is there a joint there or not?

A. Yes, sir.

Q. Do you call that a joint?

A. I know of no one that does not call it a joint.

Q. Does it act like the knee joint?

A. Not at all—it is a different kind of joint.

Q. What is the motion of it, if there be any?

A. Very, very slight—it is a joint in the sense that it is the junction of two bones with an articulating surface.

Q. What does it articulate with?

A. The ilium on each side, and the coccyx below, and the lumbar spinal vertebrae above.

Q. Do those bones just unite, or do they overlap?

A. They dove-tail in a measure—they are not smooth—they are that way (showing) in a measure, kinder mortised like.

Q. Dr. Lord described them as this way, just as my hand is, (showing). Is that right?

A. I don't understand the description, but I am sure Dr. Lord had it in his mind right, because he is thoroughly familiar with it.

Q. They do overlap?

389 A. That is not true. I will qualify that in the sense that there is a kind of flange that comes over the side bone, but they don't come exactly together edge to edge.

Q. Is Gray's Anatomy a recognized standard work in the medical profession?

A. Yes, one of the best.

Q. Is figure 208 a correct representation of the Sacrum and pelvis (showing)?

A. Yes, it is in the sense that it is an old drawing. Of course, we have a big improvement on that now. This is an old book, way back in '83—nearly as old as you are. That was discarded long ago. It fairly represents it.

Q. And represents the overlapping?

A. It don't represent any overlapping.

Q. Do you say that does not represent an overlapping?

A. I am sure it does not.

Q. That is your construction of it?

A. It is a fact, and so stated by Gray—that is, the man who wrote that edition. Gray was dead even before that book was written, I think.

Q. Then does the sacrum overlap this other bone or not?

A. Only in the sense that there is a kind of flange that comes out over it.

Q. What is the length of that flange?

A. I don't know. It varies in different individuals; from half an inch, probably a quarter or a half. It sits over the edge of the ilium.

Q. In taking an x-ray does it make any difference whether the bone is thick or thin?

A. Yes, sir, it makes a difference in this sense; a thick dense bone will throw a better shadow than a thin bone.

390 Q. Is it possible with the modern X-ray to take an exposure and keep it so long that it shows part of the bone and does not show the balance?

A. That is true, you can keep it so long that it will destroy the whole shadow, that is, destroy the shadow image on the plate.

Q. Can you take it of certain kinds of bone so it shows the bone smaller than it is?

A. That depends on the distance of the tube from the bone.

Q. Wouldn't it depend on whether the bones are all of one thickness?

A. Not as to size.

Q. Can't this happen; you take a bone not all one size, but tapers, and leave the exposure there a certain length of time, and the thin part of the bone will show dark and the heavy part light, and the bone appear smaller at least?

A. That is not true; the details and outline would be the same, but the shadow would be lighter in the thick bone and darker in the light bone.

Q. The thick part would show clear?

A. Yes. In other words, you can expose a thick bone longer and get the shadow than you can a thin bone. If you expose any bone too long you are not going to get any shadow at all. A thick bone will stand more exposure than a thin bone, but the details and outline of the bone is the same.

Q. And very much what it shows depends on the way the machine is handled?

391 A. Very largely indeed. This work is very analogous to photography. Like a man having his picture taken—a preacher wants to look sanctimonious, and a politician wants to look some other way, and get the picture taken to suit the case——

Q. You took an X-ray here last night?

A. I assisted.

Q. Did you take that, doctor, so as to show this part of the *the* sacrum—the part that is shown in the picture Dr. Harris had at Omaha, or not?

A. Yes, sir.

Q. The picture will show for itself whether that is true?

A. It does to me.

Q. And the picture will show the bones of course?

A. Yes, sir.

Q. That is one thing that can't be wholly hid?

A. Yes, sir, it can be.

Q. By breaking it all up?

A. No, by exposing it too long. I *would* cause it too look the same

color as the muscles and tissue around it so you couldn't tell there was any bone there at all.

Q. By the time you got through, did you have the portion of the sacrum where this trouble is with Williams? Didn't you have it exposed so long you couldn't tell the bone from the flesh?

A. That is not true; I found no trouble in either one of the Williams' that I examined, either in Omaha or here, but this picture was taken with as much skill and care, with an effort to
392 bring out the parts perfectly and correctly that are exposed to the ray. It does bring them out, but the picture taken in that exposure was in the developing a little too long and is blurred—the bones are the same.

Q. It is blurred?

A. Yes, sir.

Q. You have no better eye sight than the jury?

A. Unfortunately my eye sight is not good.

Q. In fact you use glasses to see?

A. Yes, sir—I am not to blame for it though.

(Witness excused.)

393 Dr. S. H. McLEAN called as witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. Your name is Dr. S. H. McLean?

A. Yes, sir.

Q. You live here in the City of Jackson, do you?

A. Yes, sir.

Q. How long have you lived here?

A. Since '94.

Q. You were practically raised in the City of Jackson, were you?

A. I didn't come here to live until after I graduated in medicine,
about 22.

Q. When did you graduate in medicine?

A. April '93.

Q. How long have you been practicing your profession, since that time?

A. Since about May '93.

Q. Here in the City of Jackson?

A. No, I stayed at Tchula, Miss., till January '94.

Q. Then came to Jackson?

A. Yes, sir.

Q. You have been practicing your profession in Jackson ever since that time?

A. Yes, sir.

Q. Doctor, do you know George R. Williams, the plaintiff in this case?

A. Yes, sir, I met him yesterday morning, I believe it was.
394 Q. Did you have occasion to make a physical examination of George R. Williams, at the instance of him or his counsel during the progress of this law suit?

A. I was telephoned by Dr. Liddle the night before to meet him at his office at 8 o'clock next morning. I didn't know what was the matter till I got there, and about 9 o'clock this gentleman came in.

Q. You found George R. Williams there—did you find his counsel there?

A. No, sir, Mr. Harrington I believe was in the sitting room.

Q. He was there?

A. Yes, sir.

Q. And George Williams was there?

A. Yes, sir.

Q. There was no representative of the defendant companies, the Illinois Central or Yazoo & Mississippi Valley there, was there at the time, that you know of?

A. I think not.

Q. Either lawyers or doctors?

A. No, sir.

Q. Now you were called there, and after you got there were you called upon or invited to make a physical examination of this man?

A. Yes, sir.

Q. Did you make a physical examination of him?

A. Yes, sir.

Q. What sort of examination did you make; was it a critical examination—one for the purpose of ascertaining, if possible, what was the matter with him?

395 A. Yes.

Q. Well, did you make a careful examination of him, as far as you were able to make, according to your idea of what was necessary to ascertain what his condition was?

A. Yes.

Q. Well, at the same time, did your examination proceed beyond the fact of making a physical examination of his body, and proceed to the point of having an x-ray examination made of the structure of his body?

A. I saw the x-ray pictures taken.

Q. You were present at the time when the x-ray photograph was taken, and saw the result of it?

A. Yes, sir.

Q. I want to ask you this question: having been called on to examine this man physically by him or by his counsel, at a time when there was nobody there representing the defendants in this case, and after a careful and critical examination of him, as you say you made physically, and by x-ray examination, state what your opinion is as a medical expert, as to whether or not there is anything seriously the matter with him?

A. I don't think there is much the matter with him.

Q. That is the result of your examination?

A. Yes, sir.

Cross-examination by Mr. Watkins:

Q. You merely state that that is your opinion?

A. That is my opinion.

Q. What did he complain of?

- A. Well, he come in on crutches and got on the table and complained of pain in his hips, I think.
- 396 Q. Mr. Wells asked you about there being no representatives of the railroad present; would that have made any difference in your opinion, if anybody had been there representing the railroad?
- A. No.
- Q. You are just giving the jury your best judgment?
- A. Yes, sir.
- Q. That is a matter very difficult to tell, when you come to dealing with subjective symptoms, isn't it?
- A. It is sometimes difficult.
- Q. You found him suffering from anesthesia, didn't you?
- A. You mean loss of sensation in his limbs?
- Q. Yes.
- A. Well, he said he didn't feel the pin when I stuck him.
- Q. You tested him?
- A. Yes, sir.
- Q. Pretty severely, didn't you?
- A. I didn't test him severely.
- Q. Didn't you test him once so the blood came out?
- A. Well, a little prick of blood.
- Q. So far as you could see, he didn't feel it?
- A. He said he couldn't.
- Q. You could find nothing to the contrary?
- A. Not from his expressions.
- Q. You mean you couldn't find any broken bones, or any evidence of broken bones?
- A. No, I couldn't.
- Q. If he was telling the truth, and couldn't feel those pins you stuck in him, what was the matter with him, if anything?
- 397 A. I don't know that anything is the matter with him. A man can sometimes stand a good deal of pricking with a pin, and tell you he doesn't feel it.
- Q. Assuming as a matter of fact he doesn't feel it?
- A. Well, he may have some spinal lesion.
- Q. In other words, his condition would be abnormal?
- A. If it is true that he doesn't feel it, it would be abnormal.
- Q. Assuming that he doesn't feel it when you stick pins in him, then, as a matter of fact there is something abnormal about him—you would diagnose it as some kind of spinal trouble?
- A. Of course I can't tell whether he feels it or not—
- Q. I understand—you make yourself very clear; if he didn't feel it, then he is suffering, in your judgment, from some spinal trouble?
- A. Yes, sir.
- Q. You don't claim to be an x-ray expert?
- A. No, sir.
- Q. The x-ray you spoke of was the one taken with the man flat on his back, taken by Dr. Liddle?
- A. That morning.
- Q. That was the only one taken in your presence, of this man George Williams?

A. Yes, sir.

Q. You never saw one taken in any other position?

A. No, sir.

Redirect examination by Mr. Wells:

Q. Now, doctor, you saw what the result of that x-ray examination was, didn't you. You could read the picture when it
398 was made by someone else?

A. I can tell fairly well—I am not expert.

Q. Have you seen the picture that was supposed to have been made of George R. Williams in Omaha, Nebraska, which purports to show a separation between the sacrum and the pelvic bones of his body?

A. I have seen so many pictures, I don't know whether I have seen that identical picture.

Q. I will ask you to look at the picture, and will ask the reporter to let us have the picture, Exhibit "A" to the deposition of Dr. Harris.

(The stenographer produces the picture asked for and the same is placed in the shadow box.)

Q. Now doctor, examine that. That is a picture which was made Exhibit "A" to the testimony of Dr. Harris, of Omaha, Nebraska, which is admitted in this case to be a picture taken of George Williams, the plaintiff in this case at one time by him. What does that picture indicate as to the joints, or separation of the bones of the body there, or any of the bones of the body there?

A. I don't see anything abnormal in that picture.

Q. Nothing abnormal?

A. No, sir.

Q. I will ask you if you were present and participated in the taking of a picture of Mr. E. K. Williams, who is a citizen of this city, on last night?

A. Yes sir.

Q. And if you have seen the result of that picture?

399 A. Yes, sir.

Q. Did you find Mr. Williams to be a normal man, without any injury of any character?

A. I think he was a normal man.

Q. I will ask you to state whether or not the picture which was taken of Mr. Earl Williams in your presence last night, shows practically the same situation that is shown by that picture?

A. That looks like a little further separation to me, in that picture.

Q. This is the picture taken of Earl Williams last night in your presence, and filed as an exhibit here. State whether or not it is not a fact that this picture taken of Earl Williams, shows a greater separation of these bones than is shown in the picture you have just looked at, and admitted to be the picture of George R. Williams, the plaintiff in this case?

A. Yes, that shows a further separation.

Q. It shows a greater separation and a greater abnormality?

A. In my judgment.

Q. And that is a picture of an absolutely normal, healthy man, who never had any accident at all, taken in your presence, and taken last night?

A. Yes, it was taken at an angle—slanting, and not straight.

Q. You took another picture of Mr. Earl Williams last night, didn't you, and one which shows no sort of abnormality of any kind?

A. I think they took one straight on his back.

Q. I will ask you to look at this one—that is a picture of
400 Earl Williams as taken last night in the normal attitude; that is, directly in front of him, and shows no abnormality at all. If it does, point it out?

A. No, I don't see any.

Q. So that, I understand you to say that the picture taken of an absolutely normal man, without any injury to his back of any kind, shows a greater abnormality and a greater apparent separation between those bones by the picture, than the picture presented to you as being the picture of George R. Williams?

A. Yes, sir.

Q. I will ask you this question: If a man was injured on the 15th day of March 1913, and had an external injury to his spine, or to the sacrum, or to the bones of his body back there that we have been talking about, to such an extent as to cause an absolutely and true anesthesia of his lower limbs, and that condition continued from that time down to the present time—as to what evidence there would be, if any, on his lower limbs to indicate that was the true condition, as to atrophy, or increase in the size, or other respects?

A. At the time I examined him he was a well developed man. No wasting of the muscles; perfectly normal, so far as I could see. I took the measurement of both legs from the anterior spinous process to the ankle, which is the correct measurement, and they both measured the same—

Q. The question I asked you was, if there was an absolute
anesthesia of the lower limbs, which to my mind means a sort of
paralysis of the lower limbs, as far as I can get it out of this
401 case—if that continued for a period of time, would there or
would there not be atrophy of the muscles of the lower
limbs—if it continued for that length of time?

A. I can't answer that question. The sensation would have nothing to do with the development of his muscles.

Q. You stated that you looked at his limbs and found them normal, and found no atrophy. Would you have expected to find atrophy in a case of a real situation?

A. If he had paralysis of both legs, or one leg, I would expect to find atrophy. He had no paralysis; he had altered sensation, apparently.

Q. There was no evidence of anything of that kind in his legs?

A. No, sir, he was a well developed man.

Q. So, at the conclusion of all your examination, the best you

could make, you undertake to say, according to your best judgment as a physician, that there was nothing seriously, and is nothing seriously the matter with this man?

A. In my opinion there is nothing seriously the matter with the man.

(Witness excused.)

402 Dr. E. H. GALLOWAY a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. You have already been examined as a witness in this case by the plaintiff?

A. Yes, sir.

Q. And have been sworn as a witness already?

A. Yes, sir.

Q. Since your examination as a witness in this case, doctor, have you been present and participated in the taking of certain x-ray photographs of a young man in this town by the name of Earl Williams, on last evening?

A. I have.

Q. So far as observation and examination went, is Earl K. Williams a man who has ever had any serious injury of any kind to his back or spinal column?

A. He has not.

Q. He is a normal man in that respect, as I understand you?

A. So far as I know, he is.

Q. Now, doctor, there is a certain photograph I think which we exhibited to you on your leading examination here. I don't remember whether it was or not. I will ask you as to whether or not a photograph, which was filed as exhibit "A" to the deposition of Dr. Harris, of Omaha, Nebraska, was shown you, or has been shown you either then or since, which is admitted here to be a photograph purporting to have been taken of the plaintiff in this case; have you seen that photograph?

403 A. I have seen some photographs taken by the doctor. I don't know that I can designate them in that way.

Q. Now, doctor, in the machine before you there (indicating shadow box) there is a photograph, marked Exhibit "A" to the deposition of Dr. Harris of Omaha, Nebraska, which is admitted to be a photograph, and which he produces as being an x-ray photograph, taken of the plaintiff in this case, and I will ask you whether or not that x-ray photograph shows an apparent dislocation or separation or non-joinder of the plevic bones and the sacrum?

A. I do not think so.

Q. I will ask you whether or not you have seen a photograph taken of a perfectly normal man, one who has sustained no injury—namely, Earl Williams—last night, which photograph shows the same condition shown in this photograph, except to a more exaggerated extent?

A. I have seen it. It is not as good a photograph as that and does not show up the bones to the extent that does——

Q. Does it or not show the same apparent separation that shows?

A. In the lower part it does. It does not show the upper part.

Q. That is a photograph taken of an absolutely normal man?

A. Yes, sir.

Q. And nothing the matter with him at all—he never has had an injury of any kind?

A. No, sir.

Q. I noticed on my examination of you yesterday, that you didn't give any voluntary information of any character.

404 A. I never do.

Q. In other words, I would lead out and ask you a good many questions and you always answered what I asked you and nothing else, and I probably failed to get some information I might have gotten if I had asked more questions. Now, I want to ask you this question, as to whether or not you participated, since the beginning of this trial, in a physical examination of the plaintiff in this case, George R. Williams, and at whose instance and request it was made?

A. Why, I participated in the examination at the request of Dr. Liddle. He told me that Watkins & Watkins desired me to do so.

Q. In other words, Dr. Liddle was going to take some photographs, and you were invited to be there in conjunction with another physician, to make a physical examination of him at the same time at the instance of counsel for the plaintiff in this case?

A. Yes, sir.

Q. Was there any representative of the defendant railroad companies there?

Objected to because he asked that question yesterday; objection sustained.

Q. You made that examination, did you?

A. Yes, sir.

Q. You made it according to your best skill and ability?

A. Yes, sir.

Q. You made it with the earnest desire to find out the truth about it?

A. I did.

405 Q. I will ask you as a physician and a scientific man, and as a witness, what your medical opinion is as to whether or not there is anything the matter with this man seriously?

A. Well, I didn't think that the findings in the case justified the condition that the man apparently was in.

Q. Then what is your opinion as to whether or not he is seriously injured or not?

A. Well, the only way I can answer that is, that in going over his condition, and viewing these plates, that I didn't find conditions that should place him in the condition that he was in.

Q. Then you are not willing to testify, after a careful examination—you can't say that there is anything seriously the matter with him?

A. No, I can't.

Q. Your examination didn't develop that?

A. I testified on yesterday, that all I found in his condition was this anesthesia and this enlargement on the last dorsal or the first lumbar vertebra; and that is all I found in his condition.

Q. I will ask you this question: if this man had sustained a serious injury to his spine, or to the bones of the body about which we have been talking, which would produce real genuine anesthesia of his lower limbs, and that injury was sustained on the 15th day of March, 1913, and continued continuously that time up to the present, what evidence, if any, would there be on his lower limbs to indicate that was true?

A. Well, he would have the anesthesia, and he would have
406 atrophy of the muscles of his limbs.

Q. When you examined him did he have atrophy of the muscles at all?

A. No, I think his limbs were normal.

Q. Atrophy, as I understand it, is a wasting away of the muscular tissues?

A. That is correct.

Q. He had no evidence of that at all?

A. None I could see.

Q. You say that would have been one of the indications if that condition had existed?

A. That is my opinion.

Q. You didn't find it that way?

A. I did not.

Cross-examination by Mr. Harrington:

Q. Doctor, if a young man weighed from 150 to 156 pounds, and kept losing in weight till he got to 136—would that indicate some wasting away?

A. Yes, that indicates some general wasting.

Q. This anesthesia—as a matter of fact you can have it without any broken bones, can't you?

A. Yes,—anesthesia of his limbs without broken bones?

Q. Yes, anesthesia I mean in the flesh, for that is all anesthesia is?

A. Well, I should think anesthesia of the lower limbs would be due to pressure on the cord.

Q. Pressure of some kind?

A. Yes, sir.

Q. As a matter of fact, anesthesia is not a bone disease
407 or trouble?

A. No, it is a nerve disease.

Q. And if a man gets hurt by a knock on the back, to affect the cord or the nerves surrounding the cord any way, it would produce anesthesia?

A. I don't know what you mean by the nerves surrounding the cord?

Q. Well, the nerves that come up to the cord.

A. You mean leading from the cord?

Q. Yes.

A. Yes, if you had a severance of those you would have anesthesia.

Q. Or any injury to them?

A. Yes.

Q. And he might get worse and worse?

A. Yes.

Q. And might ultimately become helpless as to walking?

A. Yes, sir.

Q. And yet never have a broken bone in his back?

A. Yes, probably so.

Q. In this case you didn't find any broken bone?

A. There are none.

Q. You don't know what is the cause of his inability to walk?

A. No.

Q. You do find him going about lame?

A. Yes, sir.

Q. And as far as you know he was lame since he was hurt by the Illinois Central Railroad company?

A. So far as I know, yes.

408 Redirect examination by Mr. Wells:

Q. Doctor, you used this expression there a while ago: I think I understood you—possibly I didn't. You said the physical examination and the X-ray examination that you made of this man didn't bear out the idea that he was in the condition that he appeared to be in. You mean by that that it didn't bear out the condition that he claimed to be in. In other words, I don't understand what you mean by "appeared."

A. Well, I meant by that, this: that the examination that I made, that is, the moving of his limbs and the viewing of the X-ray plates, which revealed to me that he had no fracture or separation, didn't seem that there was enough cause to show the symptoms which he had.

Q. That he complained of?

A. Yes, sir.

(Witness excused.)

409 Dr. E. B. LITTLE, a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. You testified during the progress of this case to certain X-ray photographs that you made of Mr. George R. Williams the plaintiff in the case, and I believe you further testified to the fact that you are a specialist engaged in the business of taking X-ray photographs—

By the Court: Yes, sir, he qualified.

Q. I will ask you whether or not you have taken some other photographs, which have been produced in this trial—namely, the X-ray photographs of Mr. Earl Williams?

A. Yes, sir.

Q. Did you take those photographs on last evening?

A. Yes, sir.

Q. Who was present at the time the photographs were taken?

A. Dr. Hall, Dr. McLean and Dr. Galloway.

Q. And Mr. Williams, the man being photographed?

A. Yes, sir.

Q. Now doctor, you are an expert in this line, and a specialist in this line—you are able to read the results of an V-ray photograph, are you not?

A. Yes, sir.

Q. This is an X-ray photograph introduced in this case, marked Exhibit "A" to the deposition of Dr. Harris of Omaha, Nebraska, and is admitted to be a photograph which is alleged to have been taken of George R. Williams, the plaintiff in this case; I wish
410 you would look at that photograph with a view of reading it, and say whether or not it apparently shows any separation between the pelvic bones and the sacrum on one side, or what it does indicate?

A. It shows the position where one side is raised more than the opposite side; in that way this junction shows up better in this picture than it would ordinarily.

Q. That photograph, doctor, you can tell it was taken from some angle, or can you tell it was taken perpendicularly?

A. Yes, sir, taken at an angle.

Q. I will ask you whether or not a photograph taken from that same angle, of a perfectly normal man, who never had an injury at all, wouldn't show the same thing?

A. I don't say in every case it will show exactly the same thing: there may be a little difference in some people, that it didn't come together just alike, but it will show that separation.

Q. Of a normal man, just like it shows there?

A. Yes, sir.

Q. It is not a fact that the photograph that you took of Earl Williams last night from an angle, shows the same separation that is supposed to be shown in that picture?

A. Yes, sir, it shows the same separation.

Q. I will put that photograph in this box. Is that the photograph that was taken last night by you of Earl Williams?

A. Yes, sir.

Q. Earl Williams is in a normal condition and a healthy man, so far as you know?

411 A. Yes, sir.

Q. State whether or not the same separation that is apparently in the other picture is apparently in this one?

A. The same separation appears at the lower end. The upper end you can't make out as distinctly.

Q. But the same separation shows of a perfectly normal man as shows in the other?

A. Yes, sir.

Q. Now doctor, in taking these photographs of this man, did you take the photographs properly?

A. I took it in a certain position of Dr. Hall——

Q. Did you juggle the things anyway—could you do that?

A. You can bring out certain shadows by putting the patient in a certain position——

Q. The fact of the business is, that a photograph taken of any perfectly normal man, with certain qualifications and idiosyncrasies of the different people, will show the same separation?

A. Yes, sir.

Q. Any time, whether any injury ever occurred to his back or not?

A. Yes, sir.

Cross-examination by Mr. Harrington:

Q. Will you show on this picture, if it is there, the junction between the sacrum and pelvic bone, where they are fastened together?

A. I didn't say you could see the upper end, I said the lower end.

Q. It doesn't show that wedge place in the top where they are held together tight?

412 A. No, it don't show it.

Q. And you can't make a picture that does show it, where it is open at that particular place?

A. I think it would have shown it up high as low down.

Q. Don't you know enough about the human system to know that it is the top where the wedge fits—where it is tight?

A. There is just as much reason for it fitting tight at the bottom as the top.

Q. Do you say that as a matter of anatomy?

A. It didn't show in that picture.

Q. Answer my question—do you say that as a matter of anatomy, that that is true?

A. I am not prepared to answer that—I am here to tell about that picture.

Q. Who is responsible for this—who directed this work to be done?

A. Dr. Hall and I did together.

Q. He was directing the movements?

A. Yes, sir.

Q. He placed the machine?

A. I placed the machine.

Q. He says he did—who is right?

A. Maybe with his suggestion we put it at a certain angle.

Q. When you got done you had a condition that this jury couldn't see the junction between the sacrum and pelvic bone at the top?

A. Dr. Hall didn't have anything to do with the developing of the picture, except to witness me. That is due to the developing and the way it came out.

Q. Have the rays nothing to do with it?

413 A. I think the picture would have shown up if we had got the proper developing. We got proper developing below.

Q. Isn't there a difference in the rays there?

A. Of course the rays would come off at a certain angle.

Q. How does it happen that under the direction of Dr. Hall, this jury has concealed from them the very matter we are quarreling about?

A. I think it is due to the developing of the plate, not any other condition

Redirect examination by Mr. Wells:

Q. It is just merely a matter of developing photographs—sometimes you get good developing, and sometimes it is less perfect?

A. Yes, sir.

Q. That is all?

A. Yes sir.

Q. You are an expert electrician—could there be any sort of manipulation of the machine under your directions, that would have developed a portion of the picture and hid out the other part, except from the developing? I mean would it take part of the picture and keep the other part untaken?

A. I don't know of any way of obstructing it, when you have your plate under it and have your tube right over it.

Q. I will ask you this question: As to whether or not in your experience as an expert x-ray man—whether or not the picture of a normal man, who had never sustained any injury to his back,

414 taken at the angle at which that picture was taken, will apparently show this separation between this joint, just as that picture shows?

A. I think it would.

Q. And in every instance?

A. Yes, sir.

Recross-examination by Mr. Harrington:

Q. You never took any of that kind except of Earl Williams last night, did you?

A. No, sir, that was the first time.

Q. That is all you can tell about?

A. Yes, sir.

Q. And you can't point out in that picture this place we are having the trouble about?

A. Not above, we can below.

Redirect examination by Mr. Wells:

Q. You are ready and willing, are you not, to take a picture fairly of any normal man that will be presented to you, under that same condition?

A. Yes, sir.

(Witness excused.)

415 Mr. J. C. KEYS a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. Where do you live?

A. I live at Memphis, Tenn.

Q. What was your employment on March 15, 1913?

A. Special officer for the I. C. Watchman in the yards.

Q. Was that your duty at that time?

A. Yes, sir.

Q. Were you on duty as such watchman, and in that capacity on the 15th of March, at the time when George Williams is said to have sustained some sort of injury up there?

A. Yes, sir.

Q. How long have you been employed there as watchman?

A. About 6 years.

Q. Are you familiar with the tracks and yard there?

A. Yes, sir.

Q. I hand you here a blue print, which is supposed to be an accurate representation of that whole situation, and will ask you to please look at it and see whether or not that is a fair and correct map of it. You will notice the names of the streets are marked at each end of that map?

A. Yes, sir, that represents the yard.

Q. I notice at one end of this map is apparently a street marked Iowa Avenue?

A. Yes, sir.

Q. And at the south end of this map is marked a street, Mc-Lemore Avenue?

416 A. Yes, sir.

Q. Please state at which end of this yard the Iowa street avenue is?

A. At the north end.

Q. McLemore is at the south end?

A. Yes, sir.

Q. On this map are certain representations indicating the various switch tracks by numbers; will you please indicate on that map which one of those tracks is track 21. How are the tracks numbered, each to west, or west to east?

A. We have a lead on the west side and they start up here at Iowa and are numbered down, and the tracks that come out from the other and start at McLemore and are numbered down. They start over here at the east side and go back from 1 to 21 to the west side, beginning of the east side of the ward.

Q. As far as the number is concerned the first track would be No. 1, and they run east?

A. They run west to 21.

Q. Beginning at 1, 2, 3, 4, 5, 6, and consecutively to 21?

A. Yes, sir.

Q. As I understand you, track 21 is the westmost track of the yard?

A. Yes, sir, the outside track.

Q. Will you indicate on this map about what is known as the car knockers' shanty, or some sort of a house there. Where is the car knockers' shanty situated with reference to Iowa avenue?

A. Well, it is a very short distance from Iowa Avenue, somewhere right along in here. (Showing on blue print.)

417 Q. At the north end of this yard?

A. Yes, sir.

Q. The south end of track 21 of that yard is how far from McLemore Avenue?

A. The end of track 21?

Q. Yes, sir.

A. I suppose it is 20 or 30 car lengths; I couldn't *any* exactly,—between 20 and 30 car lengths.

Q. You mean it is 20 or 30 car lengths from Iowa to McLemore?

A. From this track 21; 21 don't run down to McLemore—it stops about the center of the yard.

Q. Where on that track, according to your best information was this I. C. car on which Mr. George Williams is supposed to have been injured. Where is that located on that map?

A. Well, I never did see that car. I couldn't say positively.

Q. Where is the point it is said to have been located?

A. Where I heard it was, was right close to the end of this track—the second car.

Q. Where is that on this map?

A. 21 runs out here. What they told me, it was right along in here somewhere. (Indicating.)

Q. From the end of track 21—say there was 3 gondoles and a box car; where would that likely put it on that map?

A. Well, I suppose some place right along there. (Indicating.)

Q. On the night of March 15th, did you see Mr. George R. Williams, the plaintiff in this case?

A. The first I seen of him on that night, as I remember, was when I seen him coming out between track 20 and 21, on the
418 north end, and seen him fall. That was the first I remember seeing him that night.

Q. Where were you and what were you doing at the time when your attention was first directed to Mr. Williams?

A. I was making my first round through the yards, from McLemore down to Iowa, and I stood around Iowa a few minutes and turned and was going back towards McLemore on the west side.

Q. You were patroling the yard as night watchman?

A. Yes, sir.

Q. And you said you had made your first round, coming from McLemore through the yard, and were starting back down through the yard again?

A. Yes, sir.

Q. Now as you started back down there, just state to the jury exactly what you saw?

A. Well, as I started back on the west side of the track I looked down between 20 and 21—there was cars standing on each track,

and I seen somebody come running between 20 and 21 without a light. I first taken it to be someone who had picked up something and was trying to make a get away, and I walked on pretty peart, and so they run to the last car that was on 21——

Q. The last car in which direction?

A. On the north end of 21. And all at once he wheeled around and throwed his hands against this car and slid out to the end of the car and fell right over the track. I run to him—I thought it was someone drinking probably—and pulled him off and some boys come around there from the car shanty, and some of us made the remark, was he drunk——

419 Q. Don't tell anybody what anybody else said——

A. I says "I can't smell any whiskey on his breath." We pulled him off the track and carried him to this car inspector's shanty and someone called the doctor, and the doctor came and examined him and they sent him to the hospital, and I stayed around him till he was taken away and he never did speak.

Q. Mr. Keys, as I understand you, you were starting back from Iowa avenue going south when you saw this man who afterwards turned out to be George Williams?

A. Yes, sir.

Q. That is the man it was?

A. Yes, sir.

Q. Running between what two tracks?

A. 20 and 21.

Q. What direction was he running?

A. He was coming north.

Q. And at what point was it you say he fell?

A. Right at the end of the car that was on 21, just a short distance south of this car knocker's shanty.

Q. How far is that point where you saw this man come up there and fall—how far is that from the point at which you have indicated on that map as being the point where this car was located at the south end of track 21?

A. Well, I suppose about 30 car lengths.

Q. 30 car lengths?

A. Yes, sir.

Q. Then it was 30 car lengths from the point at which this man received his injury, if he had one—it was 30 car lengths
420 from there to the point he fell in front of you when you picked him up and carried him to the shanty?

A. Yes, sir.

Q. What was the attitude of this man as you saw him coming in that direction; what was he doing—tell exactly how he looked and what he was doing?

A. Well, he was just coming running, a moderate gait running until he got right to the center of the last car on this track, and he wheeled around and throwed his hands against the side of the car and slid out till he got to the end, and it seemed like his lands run to the end of the car and slid over.

Q. That was 30 car lengths from the end of the car?

A. Yes, sir.

Q. About what is the average length of the cars?

A. Well, there is different lengths—I couldn't say.

Q. Well, the average; what distance would you say 30 car lengths was in feet?

A. I couldn't say positively how far.

Q. I don't want you to say positively; give me some sort of an estimate?

A. Well, the average car I suppose is about 60 feet long.

Q. Well, say it is 40 feet, 30 car lengths would be 1200 feet wouldn't it?

A. Yes, sir.

Q. 300 yards—something like that?

A. Yes, sir.

Q. Is that approximately correct—you saw him running and he fell approximately 300 yards from the point at which you have been told the car was standing—or 300 yards at least from
421 the south end of track 21?

A. Yes, sir.

Cross-examination by Mr. Watkins:

Q. Which direction does Iowa avenue run?

A. East and west.

Q. You were standing on Iowa avenue about the head of where track 21 would come out if extended?

A. I left Iowa and started back towards McLemore, south.

Q. Going down what track?

A. I was right about 20 and 21.

Q. Would you be sure you were in 20 and 21?

A. I — pretty positive that I was.

Q. Why is there any uncertainty in your mind about it?

A. Well, you see a watchman walks about the yards, and pays no attention. I know I was on that side because I made it a habit to go on that west side that time of night.

Q. A man coming between 20 and 21, track 21 would be west of him?

A. Yes, sir.

Q. How many cars were on 21, going down to the end of the track?

A. I suppose 30 or 40 cars.

Q. Anyhow, more than 25?

A. I would think there was.

Q. And they were strung all the way along track 21?

A. They wasn't plumb to the end of track 21.

Q. You mean the north end?

A. Yes, sir.

Q. After you got to where the cars did start, they were pretty regular to the south end, weren't they?

422 A. I couldn't say whether there was a cut in them cars or not. I didn't pay particular attention to them.

Q. As a matter of fact you don't know but what the men had been down that night and set the cars back on the track?

- A. I don't know whether they worked that track or not.
- Q. What would be east of him as he came up track 21?
- A. A string of cars on 20.
- Q. Were there any lights down there?
- A. No, sir.
- Q. It would be dark?
- A. The only light is the ark light on the street.
- Q. How far were you from him when you first saw him?
- A. 50 feet probably.
- Q. How many car lengths—a couple of car lengths—something like that?
- A. You mean from the end of this track?
- Q. From him?
- A. Well when I first saw him probably he was 100 yards. I just could see him coming.
- Q. Could you see him 100 yards?
- A. Well, I could see the bulk of him. I couldn't see a man down in there plain enough to tell who he was.
- Q. And you couldn't see the entire outline of his body?
- A. I could tell it was someone coming towards me, but as he come closer it got more light and I could tell it was a man running.
- Q. Was there anything to indicate he was drunk?
- A. No, sir.
- Q. Anything to indicate he was staggering?
- A. No, sir.
- 423 Q. Do you know whether he was staggering or not?
- A. No, sir.
- Q. Did he ever touch any of those cars as he came along ?
- A. Not till he got to the last car on 21.
- Q. That would be west of him?
- A. Yes, sir.
- Q. When he did get half way of the last car he did catch hold of it?
- A. Yes, sir.
- Q. And you saw him fall?
- A. Y-s, sir.
- Q. Where were you when you saw him fall?
- A. I was about 50 feet then from the end of this car, and I suppose this last car on 21 was probably 100 yards from Iowa avenue.
- Q. That made you about 150 feet from him when he fell?
- A. I was in 50 feet of him. He was meeting me. This last car when he fell was something like 100 yards from Iowa avenue.
- Q. Were you going between 20 and 21 when you first saw him?
- A. In that neighborhood—I couldn't say what track—
- Q. The north end of these tracks was clear?
- A. Yes, sir.
- Q. Whether you were on 20 or 21, 18 or 19, you could still see him coming a certain distance down?
- A. Yes, sir, for a certain distance.
- Q. Those tracks are pretty close together aren't they—4 or 5 feet apart?
- A. Something like that.

Q. The truth is, a man might be walking against the car
424 anyhow—there wasn't much room in there. If a man was
a couple of feet wide, where wouldn't be more than a foot
on each side?

A. Something like that.

Q. You say he felt his way on the last car and when he got to
the end he fell?

A. Yes, sir.

Q. Which direction did he fall?

A. Fell west.

Q. What did he fall on, anything?

A. Right on the tracks.

Q. What tracks?

A. Right on the rails of 21, right behind the car trucks.

Q. Were you the first person to get there?

A. Yes, sir.

Q. When you got there you tried to pick him up.

A. Pulled him off the tracks.

Q. What was the condition you found him in?

A. Laying on his face.

Q. What did he say?

A. Nothing.

Q. What was his condition, conscious or unconscious?

A. He was unconscious, he seemed to me. That is what I
thought.

Q. That was your best judgment?

A. Yes, sir. He couldn't speak—at least he was not speaking.

Q. So far as you could tell he was unconscious?

A. Yes, sir, as far as I could tell.

Q. And you thought so, didn't you?

425 A. Yes, sir. I didn't know really what was the matter
with him. I was scared. There was meningitis in town and
I thought he had that probably.

Q. How soon was it before anybody else got there?

A. A very few minutes.

Q. Who else came up?

A. To the best of my recollection, some car repairers and some
switchmen.

Q. White men or colored?

A. White men.

Q. Do you remember their names?

A. No, sir, I don't.

Q. They took him up and carried him to the car knockers?

A. Yes, sir.

Q. What is a car knocker?

A. Car repairers—they inspect the cars.

Q. Where did you put him when you took him up there?

A. We taken him in a little room and laid him on a bench.

Q. What doctor did you send for?

A. Dr. Rudysill.

Q. He was the gentleman on the stand yesterday?

A. Yes sir.

Q. Didn't those boys rub him and try to get him back to consciousness?

A. Some rubbed some water on him.

Q. Poured water on him?

A. Rubbed some water on him.

Q. And got down and tried to open his eyes??

A. Yes, sir, I think so.

Q. There was no evidence of consciousness?

426 A. It didn't look like there was to me.

Q. And the doctor came and examined him?

A. Yes, sir.

Q. Where did the doctor examine him, in what room?

A. He was back in the south end of that little shanty.

Q. You are sure of that?

A. Yes, sir.

Q. He didn't examine him outside?

A. No, sir, we had carried him in.

Q. It is not true that the doctor examined him outside of that car knockers' shanty?

A. No, sir.

Q. He didn't do that?

A. I don't think he did.

Q. What did he do with him?

A. Had him sent to the hospital.

Q. Who went with him to the hospital?

A. I don't know.

Q. What examination was made there in the car knockers house?

A. Well the doctor looked over him—I think looked at his chest.

A. Is that all?

A. About all I noticed.

Q. He didn't take down his pants and make an examination of his person?

A. Not that I seen.

Q. If he did do it, you didn't see him?

A. I didn't see it.

Q. You turned him over to the ambulance?

A. Yes, sir.

427 Q. Who went to the hospital with him, do you know?

A. No, sir, I do not.

Q. Did you know Mr. C. T. Earle?

A. No, sir—I might have know- his face, but there are a lot I don't know their names.

Q. Do you know whether or not there was a young man named C. T. Earle there any time, who got on the ambulance and went to the sanitarium with him?

A. I heard a flagman went with him, that's all I know.

Q. Do you know whether his name was C. T. Earle?

A. Yes, sir.

Q. Had you ever seen George Williams before?

A. Yes, sir.

Q. Did you know him personally?

A. Yes, sir.

Q. Where did you see him?

A. Switching in the yard there.

Q. How long had he been working down there?

A. I don't remember.

Q. He had just been working extra up to that time?

A. I don't know whether he was extra or a regular job.

Q. Had you seen him about there that evening before?

A. I am not positive.

Q. What time of night was it you first saw him?

A. Well, I suppose it was somewhere close to 8 o'clock. I don't know exactly, it has been so long—I never paid attention to the time. I would think it was about 8.

Q. That would be your best judgment?

A. Yes, sir.

Q. It might have been a little later or a little earlier?

428 A. Yes, sir, I couldn't say positively.

Q. It might have been as late as half past 8?

A. Yes, sir.

Q. You are not positive—you made no note of the time and were not interested in it?

A. I don't know—I never noticed the time.

Q. How long after you got him to the car knocker's house that the doctor got there?

A. I suppose 30 minutes at least, maybe longer.

Q. Then if it was 9 o'clock when he got there, it must have been somewhere between 8 and 8:30 when you found him?

A. Yes, sir.

Q. As you saw the man coming up you couldn't *saw* he was not staggering, or what his condition was?

A. He didn't look to be staggering to me.

Q. You tell the jury your best judgment is that probably he was not?

A. I couldn't say whether he was staggering or not. It seemed like to me—I thought it was some one running out of the yard with something.

Q. How rapidly was he going?

A. Just a moderate gait.

Q. Talking about running—he was walking wasn't he?

A. No, sir, a kind of a little run—not a fast run.

Q. Do you know whether it was straight down the track?

A. Seemed to be pretty straight.

Q. Between the two tracks, as a matter of fact, it is very narrow, and if he went to either side he would hit the cars?

A. Yes, sir.

429 Q. You are unable to say whether he was conscious or unconscious at that time, are you?

A. I couldn't say.

Q. Those various tracks are used by the Y. & M. V. Railroad—that is your information?

A. I couldn't tell you that. I understand the Y. & M. V. and I.

C. I couldn't tell who owns it or nothing like that.

Q. Which road do you work for?

A. I work for both I reckon. I am on the Valley line, I. C. and all around there.

Q. A fellow can't tell which one he is working for can he?

A. Work for both.

Q. Sometimes one pays you and sometimes another?

A. I get my check the same way—I don't know who it comes from.

Q. The Y. & M. V. takes in the money and the I. C. pays it out?

A. I don't know.

Q. Do you know where the warehouse of John Wade & Son is?

A. Yes, sir.

Q. How far is that warehouse from where you have been informed this car from which he fell was situated?

A. I suppose about 3000 yards.

Q. Which way, north or south?

A. It is south.

Q. I will ask you if track 21 didn't feed into the track that went into John Wade Elevator Company?

A. No, sir, this track *dos* into another track—it goes off on a lead, I couldn't explain exactly how they work. Anyway
430 they have to go to Broadway and switch back into the elevator south.

Q. You don't know whether that track is used at all for getting into Wade's?

A. No, sir.

Q. Those cars in there were ordinary commercial cars, weren't they?

A. That track is generally used for Wade cars and company material—such as that.

Q. Used for those two purposes?

A. They are the most I see on it.

Q. Wade cars and the company's material?

A. Yes, sir.

Q. Wade is a very large wholesale dealer in grain?

A. Yes, sir, he runs an elevator there.

Q. Do you know anything about the duties of switchmen down there?

A. No, sir, I don't know much about his duties.

Q. You knew what a special agent's duties were, and were filling them, were you?

A. Yes, sir.

431 Mr. C. P. STUART, a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. Your name is C. P. Stuart?

A. Yes, sir.

Q. Where do you live, Mr. Stuart?

A. Memphis.

Q. What is your business and occupation?

A. My occupation at present is car foreman.

Q. What was your business and occupation in March 1913?

A. Shop inspector.

Q. What does that mean—what did you have to do?

A. Well, I have to inspect the cars that came into the rip track for repairs. Before leaving the repair track I had to see that the cars were perfectly O. K., and if there was anything left undone I put a card on the car that read "bad order", and also when the switch list was made up at night, I went to the switch list, if the car was not O. K. If it was — marked O. K. by the foreman, I went to the switch list and marked it "bad order" if it was not O. K.

Q. As I understand, you were the car inspector?

A. Yes, sir.

Q. It was your business to look at the cars and have the necessary repairs made?

A. Yes, sir, that is correct.

Q. Car I. C. 131704, about that time, or any time near that time, did you have any occasion to have anything to do with that car?

432 A. On February 25, 1913, this car was placed on track No. 5, which was known as the house track. The car was loaded with tiling or water pipe, and the car had no shop card on it at all. In other words, it was not placed there for repairs. It was supposed to be O. K.—just placed in there for this car to be unloaded. It was company material, and of course it was my duty to inspect that car and see it was O. K. before letting it go off of the repair track. We used that for repairs. Here are the repairs: removed and replaced one grab-iron; grab-iron taken to black-smith shop and replaced back on the car. We also tested the band brake, and applied a door hood that goes over the side door to prevent the rain from getting in, and the air brakes were adjusted and tested. That was all the repairs we made to the car—that was all it needed.

Q. On February 25th had occasion to overlook that car?

A. This is the record, 25th of February.

Q. You say you had those repairs made?

A. Yes, sir.

Q. What was the condition of the car after that had been done and after it was released?

A. On that date?

Q. Yes.

A. The car was O. K.

Q. Please state whether or not there was any rotten timber about it?

A. There was not.

Q. What was the condition of the roof?

A. Good.

Q. That was on February 25, 1913?

433 A. Yes, sir.

Q. Did you have any occasion to have that car handled, or handle it after that time?

A. No, sir.

Cross-examination by Mr. Watkins:

Q. What is the book you are reading from?

A. This is the record book of our repairs we make.

Q. Who makes the entries in that book?

A. I made the entries at this time.

Q. Did you make all the entries you read from?

A. Yes, sir.

Q. Where did you say that car was on February 25th?

A. Track No. 5.

Q. In what yard?

A. Memphis repair yard.

Q. Where is that yard?

A. At the Memphis car shop.

Q. North or south yards?

A. South yard.

Q. What examination did you make upon that date?

A. I made a thorough examination of the car.

Q. Do you remember now looking at the car?

A. Yes, sir.

Q. That special car?

A. Yes, sir.

Q. How many more cars did you examine that day?

A. I don't know.

Q. Can you give us the number of another single car that you examined that day?

A. Yes, sir.

434 Q. I mean from your recollection?

A. No, I don't know that I can give you the number—I can give you the initial of another one.

Q. What time of day was it you examined this car?

A. I don't remember that.

Q. What day of the week was it?

A. I don't remember that.

Q. Was it sunshiny or cloudy?

A. I don't know that.

Q. Was it night or day?

A. It was day.

Q. What time of day?

A. I don't know.

Q. Where was it when you examined it?

- A. Track No. 5.
- Q. Where was it you ever examined it before that?
- A. I never examined it before that to my recollection.
- Q. Where was it you ever examined it after that?
- A. I don't know.
- Q. How many other cars did you examine the same day you examined that car?
- A. I couldn't tell you.
- Q. Do you know whether you examined another single one?
- A. Yes, sir.
- Q. Can you tell us another single car you examined that day?
- A. I can tell the initials.
- Q. Can you give us the number?
- A. Not from recollection.
- Q. You couldn't give us the exact number?
- A. No, sir.
- Q. Could you tell us how many you examined?
- 435 A. No, sir.
- Q. Can you tell whether or not you examined more than one?
- A. I did.
- Q. About how many did you examine that day?
- A. Well, approximately 50.
- Q. And do you remember the condition of each one of them?
- A. No, sir, not every one.
- Q. Then how is it you can remember the condition of this car?
- A. Simply because it bears on my mind, from the simple fact that it was loaded with tiling, being partly unloaded that day.
- Q. What were the other cars loaded with?
- A. No other car I examined that day was loaded.
- Q. Every other car was empty?
- A. Yes, sir, to the best of my recollection.
- Q. Will you swear that was the only car loaded?
- A. I wouldn't swear, because sometimes 4 or 5 cars are set there on that track No. 4 loaded with company material, and I couldn't remember.
- Q. Is that the only way by which you refresh your memory now and tell the jury that you remember examining that particular car?
- A. I certainly remember it by that one particular thing.
- Q. That has been over two years ago?
- A. February 25, 1913.
- Q. And you examined 50 other cars that day?
- A. Approximately, yes, sir.
- Q. How long was it before your attention was directed to this accident?
- A. I can't call the date.
- Q. How long after March 15th?
- 436 A. I couldn't tell exactly.
- Q. Well, was it a week, or was it 6 months—
- A. The first time I have any knowledge of this accident was some few days before we met here.

Q. This term of court?

A. Last term.

Q. October term?

A. Yes, sir.

Q. That was the first time you ever heard of this accident, and you tell the jury you could then remember two years back going on that car and examining it?

A. Yes, sir.

Q. You did remember it?

A. Yes, sir.

Q. You did go on top?

A. Yes, sir.

Q. Which end?

A. I went up one end and down the other.

Q. You did that with all the 50 you examined that day?

A. Yes, sir, I did.

Q. How many did you examine next day, 50 more?

A. I can't say.

Q. About that number?

A. We have an average of about that many.

Q. 50 a day?

A. About that.

Q. Have you been performing that duty ever since?

A. No, sir.

Q. How long did you continue to perform that duty?

A. I followed that occupation about two years.

Q. After this accident?

437 A. N-, sir.

Q. I mean after this accident?

A. I followed it from that time up until the 20 of October, 1914.

Q. Every day examining an average of 40 or 50 cars?

A. Yes, sir.

Q. Isn't it a fact that it was your duty to go on top of the cars?

A. Yes, sir.

Q. That is what the company employed you to do?

A. Yes, sir.

Q. Do you tell the jury now that you remember the fact of going on that car?

A. I remember the fact of this car being loaded. I never told you I remembered going up on that car, only it was my duty to do it and I absolutely did it.

Q. You don't mean to tell the jury that you now remember and have present in your mind the circumstances of your going up there?

A. Only just the record, that is all.

Q. Well, well—in other words you don't remember now the fact of your going up there?

A. I would swear I did go.

Q. I understand—I mean you don't remember now the fact of having gone up there?

A. I did go up there.

Q. I will ask you if you have got present in your mind now a clear remembrance of the circumstances of your going up on that particular car?

A. I went up on the car and examined it.

438 Q. I will ask you if you have in your mind now the distinct recollection of distinctly going up on that particular car upon the 25th day of February?

A. Well, I couldn't exactly say that I do have a distinct remembrance.

Q. You say that because it was your duty to do it?

A. Yes, sir, certainly.

Q. At the time you examined this car you have no recollection whether 4 or 5 cars stood together, do you?

A. No, sir.

Q. You have no recollection about that; if there were you might have walked from one to the other?

A. Yes, sir.

Q. You say your record shows something about putting a hand-hold on that car—when does that record show?

A. 25th of February.

Q. Where was that hand-hold put?

A. On the end.

Q. Top or bottom?

A. Side grab-iron.

Q. Who put it?

A. The repair men.

Q. You didn't put it?

A. No, sir.

Q. What else did you put on it at the same time?

A. Applied a hood board.

Q. What is that?

A. A board to prevent rain from getting in at the top of the side door.

Q. What was the matter—had it decayed?

A. The record shows it was broken.

439 Q. Had it decayed—do you know?

A. No, sir, it wasn't decayed—it was broken.

Q. As a matter of fact, you don't know.

A. I do know it was broken, because we would state decayed—

Q. Whatever you do state you state from your record, because you have no personal recollection aside from your record?

A. No, no more than this record.

Q. Where was that car on the 15th day of March?

A. I don't know.

Q. You have no record of it?

A. No, sir.

Q. Did you ever have anything to do with it after February 25th?

A. No, sir.

Q. What day did it leave this track?

A. The night of the 25th.

Q. I will ask you as a matter of fact if on the 15th of March it was on track 21?

A. I don't know nothing about that.

Q. I will ask you if it is not a fact that that roof of this car was not over $\frac{1}{2}$ inch thick?

A. The roof of this car was an inch and $\frac{3}{4}$, and another inch on that, makes $2\frac{3}{4}$.

Redirect examination by Mr. Wells:

Q. Mr. Stuart, that book you have, you say it is a record made by you personally?

A. Yes, sir.

Q. At what time was that made?

A. This record on this car was made the 25th of February, 1913.

440 Q. The records, as I understand, are *and* records you make at the particular time of the thing you are doing?

A. Yes, sir.

Q. A written statement of what you are doing?

A. Yes, sir.

(Witness excused.)

441 Mr. G. W. HILL, a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. Your name is G. W. Hill?

A. Yes, sir.

Q. Where do you live, Mr. Hill?

A. Memphis, Tenn.

Q. What is your employment there—what was your employment in March, 1913?

A. General carpenter foreman, Memphis terminal.

Q. Do you remember the occasion when George R. Williams is alleged to have been injured by a fall from some car out there in the Memphis south yards?

A. Yes, sir.

Q. Did you have any occasion to make an inspection of the car from which he is said to have fallen, and when?

A. Well, this was on the 16th of March.

Q. The 16th of March?

A. Yes, sir.

Q. He was supposed to have been injured on the 15th of March, the night before?

A. That's what they say.

Q. That was your information?

A. Yes, sir.

Q. What did you do. Go on and tell what inspection you made, and what you found, and how you happened to do it?

A. Mr. Lee came to my office Sunday morning and borrowed

a pencil of me, so I went down there with him. I got up on this car and found that the grab iron was in place all right, but the bolt in one end of it was out.

442 Was that Mr. E. A. Lee, the man who kept a boarding house for the railroad men?

A. He was a telegraph operator.

Q. You went down there with Mr. Lee?

A. Yes, sir.

Q. When you got there did you make an inspection of that car with reference to the condition of that grab iron, and the car generally?

A. Yes, sir.

Q. Just state to the jury what was the condition of the car as to the roof?

A. The car roof was in good condition, and the grab-iron—one end was bolted fast so it was hard to turn around, you might say. Of course a man could pull it around, but one end was bolted fast with a bolt and nuts on top of the bolt.

Q. How was the grab-iron fastened up there, with a log-pin or bolt?

A. A bolt right through the car.

Q. How did the bolts go in, from bottom up, or how?

A. From the under side of the roof up through.

Q. The bolts go from the bottom up through the roof, and a nut screws on to hold it on the grab-iron?

A. Yes, sir.

Q. Will you state whether or not the roof of that car was rotten?

A. No, sir, it was not.

Q. Will you state whether or not there was any evidence of any character whatever to indicate that the bolt had been pulled through the roof of the car?

A. It didn't show that.

443 Q. Will you state whether or not there was any bolt hanging in the grab iron?

A. In one end.

Q. I mean in the end that was loose?

A. No, sir, not unless it was down in the boards. Of course it might have dropped down through.

Q. There was a hole in the top of the car where the bolt had been?

A. Yes, sir.

Q. And -nother in the aperture or hole at all—the bolt was out entirely?

A. Yes, sir.

Q. State as to whether or not there was any indication there as to how that end of that grab-iron had come loose?

Objected to as a matter of opinion——

Q. What was the condition of the roof of the car?

A. Good condition.

Q. State whether or not there was any indication of decay of the wood on the roof?

A. No, sir.

Objected to as leading—

Q. State what was the condition of the hole through which this bolt had originally come that held the grab-iron?

A. When I got there the grab-iron was sitting straight the car like they usually are, and when I took hold to get on the car I pulled it around of course, and the hole appeared to be all right.

Q. Did you have anything to do with that car prior to that time?

A. I unloaded it the day before.

444 Q. On what track was it situated?

A. Sitting right in the same place.

Q. Where was that?

A. Near the south end of track 21.

Q. Near the south end of track 21?

A. Yes, sir, about the 5th car in, 5th or 6th.

Q. What was at the extreme end of the cut of cars in that track 21?

A. The date we unloaded it there was 3 gondolas south of it and one north of it, with ties in it.

Q. 3 gondolas south of it and one north of it?

A. Yes, sir, coal cars we call them.

Q. You finished unloading this car when?

A. The 15th we unloaded it.

Q. What time the 15th?

A. It was in the morning some time probably. It was loaded with drain tile.

Q. So you made it empty before noon of the 15th of March?

A. Yes, sir.

Q. How long had that car been on that track?

A. It came in to the north end of 21 about the 1st or 2nd of the month. They stored some cars in there. If they knew this car belonged to 21 they would pull out some cars and set this one back, and finally kept setting it back until it got to the south end of 21, where I unloaded it.

Q. That was the storage track of the company's material?

A. We put all the company's material on that track, ties, rails, etc.

Q. And it had been finally unloaded and was standing there empty the afternoon of the 15th of March?

445 A. It stood there 3 or 4 days. On the 19th I reloaded it and sent it to Clarksdale.

Q. On the 19th that car which had been made empty on the 15th, was reloaded and sent off somewhere?

A. To Clarksdale, Mississippi.

Cross-examination by Mr. Watkins:

Q. Did you know Mr. George Williams at all?

A. I can't say I was acquainted with him. I have seen him.

- Q. Had you ever seen him before the accident?
A. Yes, I think I have.
Q. You say Mr. Lee was the gentleman that came to your office and told you he was going to look at the car?
A. Yes, sir.
Q. Was that the first time you heard of Williams' accident?
A. Yes, sir.
Q. You got your information from him, that Williams claimed to have been hurt, didn't you, on the high car next to some gondolas at the south end of 21?
A. Mr. Lee told me that.
Q. And you went with Mr. Lee to examine it?
A. I didn't go to examine the car. I was on my way to dinner and stopped with him.
Q. Was that Sunday?
A. Yes, sir.
Q. The accident occurred Saturday night?
A. That is what he said.
Q. Mr. Lee is the gentleman who has already testified for the plaintiff in this case?
A. I suppose he has.
Q. What is his position with the railroad company now?
446 A. Telegraph operator.
Q. Still with them?
A. Yes, sir.
Q. You went down and found the north end of this hand hold at the top loose?
A. Well, the bolt was out—it was not particularly loose.
Q. That was the condition you found it in?
A. Yes, sir.
Q. When did you say that car came into that track?
A. It came into the north end of 21 about the first of the month.
Q. Came from where?
A. It was loaded with this tile at Owensboro, Kentucky, and it came into Memphis about the 19th of the month.
Q. Of what month?
A. February.
Q. From where?
A. Owensboro, Ky.
Q. Came on that track?
A. No, set on the store room track. It was carded to Mr. Dugan, the store keeper.
Q. Then it was put on this track 21?
A. Later on.
Q. About the first of the month?
A. Yes, sir.
Q. Then it gradually worked its way down that track, and some time about the 14th or 15th you unloaded it?
A. Unloaded on the 15th.
Q. They you were ready to discharge it?
A. It was empty.

Q. When you were down there how many cars were on that track 21?

447 A. I couldn't say how many.

Q. 30 or 40—something like that?

A. I judge 40 or 45.

Q. That is the track on which this firm of Wade & Sons have commercial cars isn't it?

A. Sometimes they stick in cars there for John Wade.

Q. Those tracks are tracks of the Y. & M. V. R. R.

A. Yes sir, supposed to be the Y. & M. V. yards.

Q. And those tracks down there are used in storing cars in use in both interstate and intrastate commerce; that is to say, cars which come out of Tennessee into Tennessee, and cars bound from Tennessee to other states?

A. I couldn't say about that. About all the attention I paid to that track, was the company's material put there.

Q. The cars that come in and out of Memphis are stored on that track?

A. The south yard track, they store a lot of cars in there.

Q. They store cars coming into John Wade & Sons in there?

A. If they handle his cars over that track.

Q. And he handles grain coming from the various states in the union?

A. I don't know where he buys it.

Q. You know grain comes from other states, don't you?

A. The ship it all over the country I suppose.

(Witness excused.)

448 Mr. J. M. WALSH a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination by Mr. Wells:

Q. Where do you live?

A. Memphis, Tenn.

Q. What is your occupation?

A. Terminal superintendent for the Y. & M. V.

Q. At Memphis, Tenn.

A. Yes, sir.

Q. Will you please state to the court the system of inspection, if any, in use by the Y. & M. V. R. R. Company there in their yards, with reference to their cars and appliances?

Objected to as incompetent, irrelevant and Immaterial; objection overruled.

A. There is a force of inspectors and repairers employed in the south yards at Memphis, divided between Iowa avenue and McLe-more avenue. There is from 25 to 30 men there employed all the time, that is divided between day and night. Their duties are to inspect and repair cars in the yard at all hourse of the day and night. They are actively engaged in that during the 24 hours.

Q. As to cars which enter the Memphis yards, both north and

south, what inspection is made, if any, by the Y. & M. V. R. R. Company of each and every car that goes in or out of the yards?

Objected to unless he knows—

A. Well, the men are employed under my jurisdiction, and I know that all the cars that arrive there are inspected by men that are working under me.

449 Q. How about the cars that depart?

A. Cars that depart are inspected, both as to condition and for the air tests, both on trains and transfer cuts leaving there.

Q. How many men are employed for the purpose of making these inspections?

A. They divide about half and half, 15 day and 15 nights—

Q. That does not answer my question—how many of them are there?

A. Well, about 30 in all.

Q. At that particular part of the yard, 30 men are engaged in making these inspections?

A. Yes, sir.

Q. Some engaged at night and some in the day?

A. Yes, sir.

Q. And that is the manner in which the railroad company has these inspections made, and the effort to make the inspection?

A. Yes, sir.

Q. You are superintendent of the yards there, and that is under your jurisdiction and control, and it is your business to look after it, is it?

A. Yes, sir.

Cross-examination by Mr. Watkins:

Q. You of course don't do this inspecting personally?

A. I don't inspect the cars personally, I inspect the man.

Q. And inspect their reports?

A. I do that too.

Q. You don't know anything about this car in question, of your own knowledge?

450 A. I did not see it.

Q. You didn't see it either before or after the accident?

A. I did not.

Q. Who do those tracks in the south yard belong to, the Y. & M. V. or the I. C.?

A. I don't think I could tell you the dividing line.

Q. Do you know which company uses those tracks, or both?

A. The Y. & M. V. uses them exclusively.

Q. They are known as the Y. & M. V. tracks?

A. Yes, sir.

Q. There are 21 switches I believe?

A. 21 tracks.

Q. What are those tracks used for?

A. Each of them has a use.

Q. Well, state some of their uses?

A. 1, 2, and 3 was for trains pulling in from the north, at the time of this accident.

Q. All right, state some more?

A. 4, 5, and 6 were for cars to move to the south, to Nonconnah and to the Memphis and Mississippi divisions. 7 was also a track for assembling cars for the south. 8 was for bad orders; 9 for house cars; 10 for the Frisco; 11 and 1w for cuts in Noconnah; 13 was for the Southern; 14 for the Rock Island; 15 for cars coming into the yard for different industries; 16 for the Missouri Pacific; 17 for assembling cars for the team track industry north of Caroline street; 18 for assembling freight for south Memphis territory; 19 was a hold track; 20 was a track for grain that was held for the different industries; 21 was a track, one end used for the carpenters store room, and the north end for grain switched out ready to be placed

451 at the mills in that territory in the morning—

Q. Those tracks were used for both interstate and intrastate cars, were they?

A. All purposes.

Q. Those switches run together—cars could run from one to the other?

A. The tracks connect at both ends.

Q. And before putting cars in on those tracks, it was the duty of the switchman to go to the end and see that the cars were still and wouldn't move?

A. Those duties are duties the switchman would necessarily have to do at times.

Q. And if he didn't do that they would roll down on another track?

A. Not unless pushed by the engine—

Q. I understand—but while they are being pushed by an engine. They would have that tendency to do that?

A. While they are moving, yes sir.

Q. That would interfere with the operation and moving on the other tracks?

A. If pushed beyond the clearing point, yes sir.

(Witness excused.)

The defendants rest.

452 DR. T. T. HARRIS recalled by the plaintiff in rebuttal, testified as follows:

Direct examination by Mr. Harrington:

Q. Doctor, I call your attention to this Figure 208, introduced in evidence; can you point to the jury the part that is known as the knuckle—do you know any such term?

A. No, I do not.

Q. Can you point out in that 208 figure this union of the sacrum with the pelvic bone?

A. Yes sir.

Q. Show the jury where that union is?

A. The sacrum is the wedge or arrow shaped bone in the center here (indicating on figure 208). The ilium is this part of the pelvic bone at the sides. The union of those two together this point here, is called the sacro-iliac joint. That is the joint (indicating). Perhaps that is what is referred to as the knuckle.

Q. This the place where the union is?

A. Yes. It is not really a joint, in that we understand joint means movement.

Q. Is this bone, or just an open space—

Objected to as leading—

Q. What is the nature of that bone—the same as the others, or different in character?

A. Bone throughout the body is practically the same. This bone is the same as any other, except that it is tapering down, gradually getting thinner and smaller, until it disappears in the coccyx, which is the little tip at the end of the sacrum.

Q. Doctor, did you see this x-ray taken by Dr. Liddle here, 453 said to be of Earl Williams, and said to be the second one that they took, when he was in a tilted position?

A. I saw that, you—in the outside room, not in the court room here.

Q. Will you take this machine here, and take your exhibit "A" and point to them in that exhibit "A" in this light just where this separation is that you say is there; then show them that other picture and show them the same place and let them see whether or not it is shown by the other picture?

A. May I use the plate which they have taken of the normal pelvis in the normal position?

Q. Yes, sir, use your plate and their two places, and tell the jury just what they show, and what they don't show.

A. This is the plate they took of the normal pelvis tilted.

Q. Is that the one you want to use first or not?

A. I will start with the other one, I guess. I will start with the normal pelvis in an ordinary position to look at it.

Q. Which picture is that?

A. This is a picture of Earl Williams, taken last night. A picture of a normal pelvis taken in a straight up and down position—that is, straight forward and backward.

Q. Doctor, indicate the location of the union of the pelvis—there is a joining together of the sacrum and pelvis—indicate it by a pencil mark?

A. The union is at this point here. You can just see a faint indication of the union there.

Q. Is it marked by a mere line you can distinguish, or an opening?

A. Just a mere indication—a faint shadow line.

454 Q. Point out this joining place between the sacrum and pelvis?

(The jury here leaves the jury box and congregates around the shadow box.)

A. You can see perhaps better if you are not too close. They are

shadow pictures, of course, and they show a little better from a distance. The line here continues from the sacrum up toward the ilium—a continuous curve with no off-set at all. The junction is only marked by a faint dark line at this point and the curve of the sacrum. That is a normal pelvis, taken straight anterior, posterior view.

Q. Doctor, take another plate, whichever you deem best to illustrate this matter to the jury—

A. Comparing with that normal plate the plate of George Williams taken by Dr. Hall, Dr. Lord and Dr. Summers in Omaha, we see a difference here, in that the sacrum does not continue in a straight line, but makes an off-set there (showing).

Q. The picture you are now using, was that one taken by Drs. Lord, Summers and Hall?

A. Yes, sir, in Omaha.

Q. What deformity does that show, and point it to the jury?

A. It shows an off-set in the continuation of the line of the sacrum with that of the ilium in that position, and on this side too. It also shows this line of separation greater than it does in this plate here, which is a picture of a normal hip. In order to get a view of that angle better, we will take a plate which I made of George Williams in Omaha, and just look at that joint a little bit better by
455 having the patient a little to one side, and you see that break in the continuation of the line, which shows this bone is not in close apposition to that one, and this line is much heavier and darker.

Q. What does that indicate?

Q. It indicated a separation in these two bones. They are not distinctly and tightly held together. This normally is not a real joint with motion—it is just articulation where the bones come together, and as Dr. Hall explained so well this morning, it is held firmly and tightly together—just a little flexibility in it, but here you can see these two bones are separated, and they don't come together.

Q. Take this x-ray plate they took last night of Earl Williams, and point to the jury whether or not it shows anything at all about that situation?

A. This plate shows nothing at all to depend on. It does not cover the sacro-iliac joint, which would extend from in here upwards. We can't tell anything about this plate—it is over-exposed and overdeveloped.

Q. What do you mean by over-exposed?

A. Too much energy from the x-ray, either in length of time of the exposure, or the quantity used in the same.

Q. What would be the effect of that?

A. It darkens the chemical on the plate and makes a heavy shadow plate. It penetrates through the bone too much. The x-ray penetrates all substances—it goes through the bone and flesh, too, but it goes through bone much slower than through the flesh, therefore, we get the dark areas covered by the flesh first, but if it still goes on it will darken the bone, as here, and will obscure this joint.

456 You can't see only the edge—and no doctor would attempt to make a diagnosis from that plate alone.

Q. Keep that plate which they took, which you say does not show the situation, and get exhibit "A," and with this light show the jury the difference in those two plates.

A. There are the two plates, pre-ending to show the same parts of the body of a normal man and George Williams. George Williams is this one here. We can't tell just where this junction would be. We don't know where the sacrum extends to. We can't see the top of the ilium. Someone has marked on that side with a lead pencil, and there is a line on this side too. Someone has marked on that since it has been introduced in evidence. There should be no line where that is marked.

Q. Point the length of the bone you took so the jury can see whether or not this is a fair exposure or not?

A. We can see above the head of the femur—this is the hip or thigh bone, above that it is about 2 inches above the length of this instrument I hold in my hand——

Q. What do they show?

A. They have shown about half the length of this instrument above the head of the femur, which just catches the bottom part of this line.

Q. I believe that is all, unless some member of the jury cares to ask you something.

Cross-examination by Mr. Wells:

Q. I believe you said just now, no honest doctor would undertake to testify from the results of that plate you had up there?

A. No, I didn't say that. I said that he wouldn't take that picture alone and base an opinion on it.

457 Q. Didn't you say no doctor would honestly undertake to testify from that?

A. That plate alone, yes, sir.

Q. Do you know Dr. Galloway?

A. Yes, sir.

Q. Is he an honest doctor?

A. He is, as far as I know.

Q. Do you know Dr. S. H. McLean?

A. I do.

Q. Is he an honest doctor?

A. He is as far as I know.

Q. Do you know Dr. Lord, of your city?

A. I do.

Q. Is he an honest doctor?

A. He is.

Q. Do you know Dr. Summers?

A. I do.

Q. He is from your city?

A. He is.

Q. Is he an honest doctor?

A. He is.

Q. Well, all of those gentlemen have testified from that plate, haven't they?

A. I don't think they have——

Objected to, as none of those doctors have testified from that plate——

Q. Do you mean to say you are the only man capable of making a plate correctly?

A. No, sir, I do not.

Q. You examined this plate that was made last night—you don't know who it was made by, do you, personally?

458 A. Well, I didn't see it made; I heard it testified here.

Q. I understand—but you don't know anything about it?

A. Nothing only the testimony here.

Q. You were not present?

A. I was not.

Q. Do you know Dr. Liddle?

A. I do.

Q. Do you know whether or not he is an honest man?

A. I do.

Q. Do you know whether or not he is capable of making an x-ray photograph?

A. I think he is.

Q. Then that photograph was taken, according to the testimony, by Dr. Liddle, in the presence of Dr. McLean and Dr. Galloway, and yet you undertake to say here now, as to the time of exposure and the amount of electricity used, to say that plate was not properly taken?

A. Yes, sir, that is corroborated by Dr. Liddle's own testimony on the stand himself.

Q. You think you are corroborated by Dr. Liddle?

A. Yes.

Q. This photograph, the only one that properly represents the situation, according to your view, is the photograph you took?

A. No, I did not say that.

Q. But that is the one that you base your diagnosis on, and all honest doctors can testify from your photograph?

A. Any honest doctor can testify from any standpoint.

Q. They can honestly testify from your photograph?

459 A. They can from any photograph, but that picture does not honestly represent the condition.

Q. You heard the testimony of these gentlemen, who said that they had observed your photograph, supposed to be a photograph of George Williams, which it is admitted to be, and they had taken the photograph of a normal man, and it showed the same situation—did you hear them testify to that?

A. Yes, I did.

Q. Well, you have no reason on earth to question their honesty, have you?

A. They have not shown the plate here.

Q. They were testifying from the plate at the time, weren't they?

A. That plate does not show the sacro-iliac joint, and if they said the plate represented here showed the sacro-iliac joint they were talking about, in my opinion it does not——

Q. That is just a difference of opinion between you and all the other doctors, isn't it?

A. I don't think it is. I think the rest will agree with me. I think Dr. Hall will himself state that that picture does not show the sacro-iliac joint in its entirety.

Q. You think then, all these doctors agree with you?

A. Yes, they will.

Q. When? How do you account for the fact—I believe you said you got your diploma to practice medicine and surgery in 1910?

A. Yes, sir.

Q. And have only been at the business about 5 years?

A. That is right.

460 Q. How do you account for the fact that all of these physicians whom you testify to be men of high character and standing and all that, and of long experience—that Dr. Hall and Dr. Lord of your own city, and Dr. Summers of your own city, and Dr. Galloway of our city, and Dr. McLean of our city, are all in absolute opposition to your view about this matter, if they are honest men——

Objected to: objection sustained.

Redirect examination by Mr. Harrington:

Q. Doctor, are you professor in any medical university?

A. Yes, sir, I am instructor of clinical——

Objected to as not in rebuttal: objection sustained.

The plaintiff rests.

The defendant rests.

The above transcript of the testimony has been examined and approved by us this May 15th, 1915.

WELLS, MAY & SANDERS,
Att'ys for Defendant.
WATKINS & WATKINS,
Att'ys for Plaintiff.

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GEORGE R. WILLIAMS

VS.

I. C. R. R. Co. & Y. & M. V. R. R. Co.

I hereby certify that the foregoing three hundred forty-eight pages (348), contain a full true and correct transcript of my shorthand notes of the testimony introduced on the trial of the above styled and numbered cause;

And further, that I have mailed to the following attorneys: Messrs. Watkins & Watkins, Jackson, Miss.; Hon. M. F. Harrington, O'Neill, Nebraska; Messrs. Wells, May & Sanders, Jackson, Miss., all the attorneys shown by the record to be interested in said case, written notice that I have today filed in the office of the circuit

clerk at Jackson Mississippi, a typewritten copy of the record of the above case.

Witness my hand this the — day of May, 1913.

_____,
Official Stenographer.

462

Instructions for Plaintiff—Given.

GEORGE R. WILLIAMS

vs.

ILLINOIS CENTRAL RAILROAD COMPANY et al.

Instruction No. 1. The court instructs the jury for and on behalf of the plaintiff as follows: That under Section 2 of the Act of Congress, approved April 14, 1910, it became and was the duty of the defendant companies, on the 15th day of March, 1913, to equip their cars which they were using on their railroads, with proper hand-holds, and it was the express duty of the defendants, as to all cars having ladders upon them, to have secure hand-holds or grab irons on the roofs, at the top of such ladders, and a failure to have secure hand-holds on the roofs, at the top of such ladders was a violation of the Act of Congress which made the defendant companies liable in damages to any employe who was injured in consequence of the violation of this law, and who at the time of such injury was engaged in the line of duty to defendant. Now, therefore, if you believe from the evidence in this case that George R. Williams, plaintiff, in the line of his duty, went upon the car in question, in the yards of defendants, being used by them, and that by reason of a defective hand-hold at the top of said car, he fell and was injured, you will return a verdict in favor of the plaintiff.

Given.

Filed Feb'y 25th, 1915. E. D. Fondren, Clerk.

Instruction No. 2. The court further instructs the jury, for and on behalf of the plaintiff, as follows: That it is provided by Section 4 of the Act of April 14, 1910, and as applied to these defendant companies, that if they move or haul, or handle with commercial cars, any car which has a ladder thereon and which has not secure hand-holds on the roof at the top of such ladders, that such
463 car is then used at the sole risk of the companies, and they are made absolutely liable in damages to any employee who is injured in the line of duty by reason of their failure to have a secure hand-hold; and you are therefore instructed that in such cases, the employee does not assume the risk of injury, but the risk is carried by the Company.

Given.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

Instruction 3. The court instructs the jury for and on behalf of the plaintiff that if you should render a verdict for the plaintiff in

this case, you will allow him by way of damages such amount as shall fully compensate him for all actual damages sustained by him, or to be sustained by him as the result of said injuries, as shown by the testimony. And in making up your verdict, you will take into consideration any pain or suffering endured by him, or which it appears with reasonable certainty he will endure as a result of said injuries, if any and for all past or future loss of income or decrease in earning capacity, if any there be, as well as any impairment of his physical health, if any; your verdict, however, not to exceed the amount sued for.

Given.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

Instruction No. 4. The court instructs the jury for the plaintiff that it was the absolute duty of the defendants to have and maintain a safe hand-hold at the top of the car in question, and a failure so to do was negligence on the part of said companies, as a matter of law.

Given.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

Instructions for Defendants.

1. The court instructs the jury for the defendant, that the burden of proof in this case is upon the plaintiff, and before he will be entitled to any recovery he must show to your satisfaction, by a preponderance of the evidence, that he has been injured and that he was negligently injured by the defendant or its agents. If the right of the plaintiff is so doubtful in the minds of the jury that a decision in the case would be a mere guess as to who is right, the plaintiff in his suit, or the defendant in its defense, the jury should under such circumstances, find for the defendant, because the burden is upon the plaintiff to prove his case by the preponderance of the evidence, and unless he does so, he has no right to recovery. Where the case is so doubtful under the evidence, that the proof may be said to be evenly balanced, the law is with the defendant, and in such cases, you should find a verdict for the defendant.

Given.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

2. The court instructs the jury that the declaration in this case, which has been read to you by plaintiff's counsel, is no sort of evidence in the case, but only a statement of plaintiff's cause of action, and of the facts which plaintiff is required to prove to entitle him to a verdict.

Given.

Filed Feb'y 25th, 1915. E. D. Fondren, Clerk.

3. The court instructs the jury for defendant, that they are the sole judges of the credibility of the witnesses and of the weight of evidence, and in determining the credit of value which they will attach to the testimony of any witness they may take into consideration the money interests, if any, he or she may have
465 in the result of the trial; the reasonableness or unreasonableness of his or her testimony; his or her bias, if any, and his or her general appearance or demeanor upon the witness stand.
Given.

Filed Feb'y 25th, 1915. E. D. Fondren, Clerk.

4. The court instructs the jury, because that plaintiff has sued for the sum of \$40,000.00 is no reason why you should find a verdict in his favor for any sum whatever. If he can recover anything at all, he is not entitled to any more damages than the evidence satisfies you, and each of you, that he has really sustained, and only such damages as were caused by the negligent acts of the defendant or its agents.
Given.

Filed Feb'y 25th, 1915. E. D. Fondren.

5. The court instructs the jury for the defendant, that you cannot find a verdict for the plaintiff in this case upon mere conjecture and suspicion, and if you are unable to say, from a preponderance of the evidence, with satisfaction to yourselves, as to how this accident occurred, whether from the negligence of the defendant or not, then you must find a verdict for the defendant.
Given.

Filed Feb'y 25th, 1915. E. D. Fondren, Clerk.

6. The presumption of the law in this case, until the contrary is proven, is, that the defendant is not liable, before a verdict can be rendered against it, the plaintiff must convince the jury, by the preponderance of the evidence, that he has been damaged by the negligence of the company, or of its agents while acting in the line of their duty and employment. The defendant railroad
466 stands in no other or different position before the law as to its rights or acquittal, than individuals, and unless the plaintiff has shown by the preponderance of the evidence that he has suffered injury from the negligence of the railroad company, or its agents, while engaged in the line of their duty of employment, the jury must find a verdict for the defendant.
Given.

Filed Feb'y 25th, 1915. E. D. Fondren, Clerk.

7. The court instructs the jury, that in this case, as in all other cases, the parties to the suit, both plaintiff and defendant, are entitled to the independent judgment of each and every juror in the case on the facts as shown by the evidence, and the parties are en-

titled to a verdict of the jury on the facts as applied to the law given by the court. The verdict of the whole jury and opinion of each and every juror; and under the law, it is unlawful and wrong for the jurors, when they cannot agree as to a verdict to be rendered, after due consideration of all the evidence in the case, for each of the jurors to vote his idea of the verdict to be rendered and then to add the result together and divide the total amount by the number of jurors, in order to reach a verdict in the case.

Given.

Filed Feb'y 25th, 1915. E. D. Fondren, Clerk.

8. The court instructs the jury for the defendant that if they believe from the evidence, that the plaintiff while performing his duty as a flagman in the yards of the defendant fell and was injured through no fault of the defendant, then under your oaths, you must find a verdict for the defendant.

Given.

Filed Feb'y 25th, 1915. E. D. Fondren, Clerk.

467

Refused Instructions.

The court instructs the jury to find a verdict for the defendant.
Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

The court instructs the jury for defendant, that if the testimony in this case leaves the matter uncertain and shows that any one of a number of things may have brought about the injury to the plaintiff, for some of which the employer is responsible, and for some of which it is not responsible, it is not for the jury to guess between these causes and find that the negligence of the defendant was the real cause, when there is no satisfactory foundation in the testimony for that conclusion, if such should be the case. If the plaintiff is unable to adduce sufficient evidence to show negligence on the part of his employer, he must fail in his case, and no mere sympathy for him on account of his injury, will authorize the jury under such circumstances, in rendering a verdict in his favor.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

The court charges the jury for defendant, that the plaintiff has assumed and the law imposes upon the plaintiff the burden of proving to the satisfaction of the jury by a preponderance of the credible testimony, that at the time and place of the alleged injury both the plaintiff and defendant in the operation of the car in question were engaged in interstate commerce in the manner alleged in plaintiff's declaration.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

468 The court instructs the jury that persons who enter into dangerous employment, must exercise all the care and caution that the perils of the business demands.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

The court instructs the jury that the defendant's employee, the plaintiff in this suit, not only assumed the ordinary risks incident to his employment, but also the dangers which were obvious or apparent to him, or which would have become obvious or apparent by the exercise of ordinary care and prudence.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

The court instructs the jury for the defendant, that the burden of proof is upon the plaintiff to show to your satisfaction by the preponderance of the evidence, that he was at the particular time he was injured, actually handling the car or cars engaged in the interstate commerce, and unless you are so satisfied, then under your oaths, you must find for the defendant.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

The court instructs the jury for the defendant, that a railroad company is under obligation to use ordinary care in providing its employees with reasonably safe tools and appliances with which to do their work, and is under obligations to keep the same in reasonably safe repair, but this obligation is not a guaranty that such tools, machinery or appliances are absolutely safe; nor is a railroad company under the duty of using unusual or extraor-

469 dinary care in keeping its equipment or tools in repair; the measure of its duty to the employee is that of ordinary care; if it adopts the ordinary, customary and approved means or tests for the discovery of defects in its appliances, such as are customarily used by prudently conducted companies, it will discharge its duty, and the employee who sustains an injury, notwithstanding, must bear the loss as one of the risks of his occupation.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

The court instructs the jury for the defendant, that if they believe that the handhold which pulled loose and caused the defendant to fall, pulled loose by reason of the nut coming off and you find that there was nothing to indicate the weakness or defect in the same and that it would not have been ascertained by ordinary care and caution in inspecting the same, then the defendant would not be liable, and it will be the sworn duty of the jury to find a verdict for the defendant.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

The court instructs the jury for the defendant, that if they believe from the evidence in this case that the hand-hold on I. C. Car #131704 broke loose or pulled loose on account of a hidden defect so concealed in the nature of the structure, if the defect was so concealed and so hidden that an ordinary prudent and careful man would not discover it when it was placed upon the car or when it was inspected, then and in that event, the railroad company cannot be held liable and it will be the sworn duty of the jury to find a verdict for the defendant.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

470 The court instructs the jury for defendant, that if they believe from the evidence in the case, that the plaintiff fell and was injured by reason of the fact that the hand-hold on I. C. Car #131704 broke loose, the jury will not be authorized to find a verdict for the plaintiff upon proof of this fact alone. Before any verdict in this case can be rendered in favor of the plaintiff, it must have been shown, either that this hand-hold had been improperly and unsafely attached, or that the defendant had not exercised due care in keeping it in a reasonably safe condition for use; and unless this has been shown, the evidence in the case, it will be the sworn duty of the jury to find a verdict for the defendant.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

The court instructs the jury for defendant, that the mere fact that one end of the handhold of I. C. Car #131704 broke loose from its attachments and caused an injury to plaintiff, does not carry with it any presumption of negligence against the company. Before the plaintiff is entitled under the law, to any recovery in this case, the burden of proof is upon him to establish the fact that the Company had been guilty of originally furnishing a defective appliance, or of negligence in not keeping it in a reasonably safe condition for use. It is not enough for the plaintiff to show that the injury may have been the result of the negligence of the defendant, or may have been the result of some cause for which defendant was not responsible. The burden of proof is upon him, the plaintiff, to show that his injury was proximately caused by the negligence of the defendant company, and unless this has been done by a preponderance of the evidence in the case, it will be the sworn duty of the jury to find a verdict for the defendant.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

471 The court instructs the jury that when the plaintiff engaged himself to the defendant as a brakeman, he assumed the risks caused by the ordinary jerks and motions of freight cars and their ordinary movements in the coupling and uncoupling of

the same, and although you may believe from the evidence that the plaintiff fell and was injured, yet if he fell and his falling was not proximately caused by any negligence of the defendant, then his falling was a risk which he assumed by accepting such employment, and in such case, under your oath, you must find a verdict for the defendant.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

The court instructs the jury that in this case so far as the Illinois Central Railroad Company is concerned the verdict of the jury must be for the defendant.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

The court instructs the jury that in this case the evidence fails to show that this car is controlled by the Employers' Liability Act of the Congress of the United States.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

The court instructs the jury that in this case insofar as the Y. & M. V. R. R. Co., is concerned the verdict of the jury must be for the defendant.

Refused.

Filed Feb'y 25, 1915. E. D. Fondren, Clerk.

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Judgment.

GEORGE R. WILLIAMS

vs.

ILLINOIS CENTRAL RAILROAD COMPANY et al.

This day this cause came on to be heard; issue having been joined, came a jury composed of twelve good and lawful men, to-wit: A. W. Smythe and eleven others, and after hearing the evidence and the arguments, retired and rendered the folloiwng verdict: "We the jury find for the plaintiff, and assess his damages at fifteen thousand dollars." Wherefore, it is ordered, adjudged and decreed by the court that the plaintiff, George R. Williams, do have and recover the defendants, the Yazoo & Mississippi Valley Railroad Company and the Illinois Central Railroad Company, the sum of Fifteen thousand dollars (\$15,000.00) with interest at the rate of six per cent per annum from and after this date, together with all costs to be taxed. For all of which let execution issue.

February 25th, 1915.

M. B. 16, page 102.

473

Motion for New Trial.

GEO. R. WILLIAMS, Plaintiff,

vs.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY and ILLINOIS
CENTRAL RAILROAD COMPANY.

Comes the defendant, the Yazoo & Mississippi Valley Railroad Company, and the Illinois Central Railroad Company, defendants, by their attorneys, Wells, May & Sanders, and moves the court to set aside the verdict of the jury and grant a new trial in this cause for the following reasons:

1st. The court erred in granting each and every one of the instructions which were given for the plaintiff in the case.

2d. The court erred in refusing to grant each and every one of the instructions which were asked on behalf of the defendant and refused by the court.

3rd. The court erred in admitting testimony for the plaintiff over the objection of the defendants, as shown by the transcript of the testimony in the case.

4th. The verdict of the jury was contrary to the law as given by the court.

5th. The verdict of the jury was contrary to the evidence in the case.

6th. The verdict of the jury was excessive and not justified by the testimony in the case.

7th. For other causes to be shown at the hearing.

WELLS, MAY & SANDERS,
Attorneys for Defendant.

Filed Feb'y 27, 1915. E. D. Fondren, Clerk. J. P. Cadwallader,
D. C.

474

Order Overruling Motion for New Trial.

No. 2675.

GEORGE R. WILLIAMS

vs.

I. C. C R. R. Co. et al.

This cause coming on to be heard on motion of defendants for a new trial, and the same being fully considered by the court, it is hereby ordered and adjudged that said motion be and the same is hereby overruled, to which action of the court defendant then and there excepted and his exception was allowed.

Monday, March 29, 1915.

M. B. 16. page 178.

475

Notice to Stenographer.

February 26, 1915.

GEORGE R. WILLIAMS

vs.

Y. & M. V. R. R. Co. and I. C. R. R. Co.

Mr. C. W. Robinson, Court Stenographer, Jackson, Mississippi.

DEAR SIR: In the above styled cause please take notice that it is the purpose and intention of the defendants in this case to take appeal to the Supreme Court of the State of Mississippi, and you will, therefore, please prepare a transcript of the testimony in the case, in accordance with the statute in such cases made and provided, and file the same within the period of time required by law.

Yours very truly,

WELLS, MAY & SANDERS,
Local Attorneys.

We hereby certify that we have this day filed with the Clerk of the Circuit Court of the 1st District of Hinds County, Mississippi, a copy of the above notice to the court stenographer to furnish a transcript of the evidence in this case, as provided by law.

WELLS, MAY & SANDERS,
Attorneys for Defendant.

Filed Feb'y 27, 1915. E. D. Fondren, Clerk.

Ordered that the official stenographer be allowed thirty days additional time in which to file the transcript of the testimony in this case.

Ordered this the 10th day of April, 1915.

W. H. POTTER, *Judge.*

Filed April 12, 1915. E. D. Fondren, Clerk. J. P. Cadwallader, D. C.

476

Appeal Bond.

GEO. R. WILLIAMS, Plaintiff,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY and THE YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, Defendants.

Whereas heretofore at the regular February Term 1915, of the Circuit Court of the 1st District of Hinds County, Mississippi, a judgment was rendered in the above styled cause in favor of the plaintiff, Geo. R. Williams, for the sum of Fifteen Thousand Dollars, and costs, and,

Whereas defendants, the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company, have prayed an appeal, with supersedeas, to the next term of the Supreme Court of the State of Mississippi, from said judgment.

Now therefore:

Know all men by these presents: That the undersigned, the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company, principals and The Canton, Aberdeen & Nashville Railroad Company and the Chicago, St. Louis & New Orleans Railroad Company, sureties, acknowledge themselves indebted to Geo. R. Williams, in the sum of Thirty Thousand Dollars, which sum they and each of them hereby bind themselves and their successors to pay.

The above obligation is conditional upon the following conditions:

If the said the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company, shall well and truly pay and satisfy the judgment of the Circuit court of the 1st District of Hinds County, Mississippi rendered in the above styled cause, at the regular February Term 1915 of said court, and also such final judgment as may be rendered in this cause, and all costs, if the same shall be affirmed, then this obligation shall become void, otherwise to remain in full force and effect.

ILLINOIS CENTRAL RAILROAD COMPANY,

By WELLS, MAY & SANDERS, *Attorneys.*

THE YAZOO & MISSISSIPPI VALLEY R. R.
CO.,

By WELLS, MAY & SANDERS, *Attorneys.*

THE CANTON, ABERDEEN & NASHVILLE
RAILROAD COMPANY,

By EDWARD MAYES, *Att'y in Fact;*

THE CHICAGO, ST. LOUIS & NEW
ORLEANS RAILROAD COMPANY,

By EDWARD MAYES, *Att'y in Fact,*

Sureties.

I, E. D. Fondren, Clerk of the Circuit Court of Hinds County, Mississippi, do hereby approve the above bond this the 2d day of April, 1915.

E. D. FONDREN,
Circuit Clerk.

J. P. CADWALLADER, D. C.

477

Clerk's Certificate.

STATE OF MISSISSIPPI,

County of Hinds:

I, E. D. Fondren, Clerk of the Circuit Court in and for The county of Hinds in said state, do hereby certify that the above and foregoing 476 pages is a true and correct transcript of the record in the

case of George R. Williams vs. Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company, as the same remains of record and on file in my office at Jackson, Miss.

Given under my hand and official seal, this the — day of May, 1915.

[SEAL.]

E. D. FONDREN, *Clerk.*

Clerk's Transcript fee 476 pages at 35 cents per page	\$156.60
Citation, Bond and Certificate.....	1.25
Binding fee paid by Clerk.....	1.20
	<hr/>
	\$159.05

478 STATE OF MISSISSIPPI,
County of Hinds, First District:

In the Supreme Court, to the October Term, 1915.

No. 18401.

ILLINOIS CENTRAL RAILROAD COMPANY et al., Appellants,
vs.
GEORGE R. WILLIAMS, Appellee.

Assignment of Errors.

Comes the appellant by its attorneys, Mayes and Mayes, and prays the court to set aside the judgment of the Circuit Court, and assigns the following errors:

1. The verdict was contrary to the law and evidence.
2. The verdict was for an amount grossly excessive.
3. The court erred in granting each and every instruction given for plaintiff, and set forth in the transcript.
4. The court erred in refusing each and every instruction refused to the defendant company, and in sustaining objections of plaintiff thereto, as shown by the transcript.
5. The court erred in excluding evidence offered on behalf of defendant company and in sustaining objections of plaintiff thereto, as shown by the transcript.
6. The court erred in overruling objections by defendant to testimony and evidence offered on behalf of plaintiff and in refusing to exclude the same as shown by the transcript.
7. The court erred in overruling defendant's motion for a new trial, for the reasons set forth therein.
8. The court erred in modifying the several instructions asked by defendant, in the respects shown in the bill of exceptions and transcript therein.

479 Wherefore, the appellants prays that the judgment of the lower court be reversed and the caused remanded.

Respectfully Submitted,

MAYES AND MAYES.
Atty's for Appellant.

We hereby certify that we have this day mailed, postage prepaid, copy of the foregoing assignment of errors to opposing counsel Messrs. Watkins and Watkins, Jackson, Miss. this 2nd day of October, 1915.

MAYES AND MAYES,
Atty's for Appellant.

Oral Argument desired.

MAYES AND MAYES.

480 ILLINOIS CENTRAL R. R. COMPANY and YAZOO & MISS.
VALLEY R. R. COMPANY

VS.

GEORGE R. WILLIAMS.

18401.

This cause having been submitted on a former day of this term on the record herein from the Circuit Court of Hinds County, First District, and this Court having sufficiently examined and considered the same and being of opinion that there is no error therein, doth order and adjudge that the judgment of said Circuit Court rendered in this cause at the February Term, 1915 on the 25th day of February 1915 be and the same is hereby affirmed, and that appellee do have and recover of appellant and the Canton, Aberdeen & Nashville R. R. Company and the Chicago, St. Louis & New Orleans R. R. Company, sureties in the supersedeas bond the sum of Fifteen Thousand Dollars, the amount of the judgment in the Court below, together with the further sum of Seven Hundred and Fifty Dollars, being damages at the rate of Five per centum as allowed by law, as well as interest on the amount of said judgment from date of rendition till paid at the rate of Six per centum per annum, and also the costs of this cause in this Court and in the Court below, to be taxed, &c.

481 ILLINOIS CENTRAL RAILROAD COMPANY and YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY

VS.

GEORGE R. WILLIAMS.

In the Supreme Court of Mississippi.

Petition for Writ of Error from the United States Supreme Court of the Supreme Court of Mississippi.

To the Honorable Sydney Smith, Chief Justice of the Supreme Court of Mississippi:

The Illinois Central Railroad Company; Yazoo & Mississippi Valley Railroad Company; Canton, Aberdeen & Nashville Railroad Company; and Chicago, St. Louis & New Orleans Railroad Company petitioners, present this their petition for a writ of error to the

Supreme Court of the United States in the above entitled case and respectfully show that on the 26th day of June, 1916, the supreme court of Mississippi rendered final judgment for the principal sum of fifteen thousand dollars, with accumulated interest at six per cent per annum on said judgment from February, 1915, to the date of the final judgment in the supreme court of the state, plus also five per cent (5%) on the face of said judgment as damages under Section 4926 of Mississippi Code of 1906, the total sum amounting to Seventeen Thousand dollars, together with the costs, in favor of George R. Williams, the appellee, in the above case, and against the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad, the appellant therein, and also against the petitioners, the Canton, Aberdeen & Nashville, and the Chicago, St. Louis 482 and New Orleans Railroad Companies, sureties on the appeal bond whereby the said case was appealed from the state court of original jurisdiction to the supreme court of Mississippi, and by its said final judgment, the supreme court of Mississippi awarded execution thereon against your petitioners in the above entitled cause, wherein your petitioner, the said Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad were defendants, the said George R. Williams was the plaintiff, and your petitioners, the Canton, Aberdeen & Nashville Railroad Company, and the Chicago, St. Louis & New Orleans Railroad Company were sureties as aforesaid on their co-petitioners' appeal bond. All of which will appear by reference to the record and proceedings in said case, the same being numbered 18401 on the docket and record of the supreme court of Mississippi, which last mentioned court is the highest court of the state in which a decision in said suit, or any other, can be had.

Your petitioners claim the right to remove said judgment to the supreme court of the United States by writ of error under section 237 of the Judiciary act, statutes at Large of the United States, Vol. 36, p. 1156, because the said case arose under, and there was brought in question in said case the true construction of, an act of congress commonly called the Federal Safety Appliance Act, approved April 14, 1910, and acts amendatory thereof. And the supreme court of Mississippi denied petitioners, as we respectfully submit, the rights, privileges and immunities under said acts of congress in this: that it failed and declined to hold that it was error prejudicial to the petitioner railroad companies, for the trial court to give in 483 & 484 charge to the jury, as was done, instructions on the trial of the case, instructing the jury that under section 2 of the Act of Congress, approved April 14, 1910, it became and was the duty of the defendant companies, on the 15th day of March, 1913, to equip and have equipped their cars which they were using on their railroads, with proper hand-holds, and it was the express duty of the defendants, as to all cars having ladders upon them, to have secure hand-holds or grab irons on the roofs, at the top of such ladders, and a failure to have secure hand-holds on the roofs, at the top of such ladders was violation of the Act of Congress which made the defendant companies liable in damages to any employee who was

injured in consequence of the violation of this law, and at the time of such injury was engaged in the line of duty to defendant; and to instruct the jury that if they believed from the evidence that George R. Williams, plaintiff, in the line of his duty, went upon the car in question, in the yards of defendant, being used by them, and that by reason of a defective hand-hold at the top of said car, he fell and was injured, they would return a verdict in favor of the plaintiff. And to further instruct the jury that it is provided by Section 4 of the Act of April 14, 1910, as applied to these defendant companies, that if they move or haul, or handle with commercial cars any car which has a ladder thereon and which has not secure hand-holds on the roof at the top of such ladders, that such car is then used at the sole risk of the companies, and they are made absolutely liable in damages to any employee who is injured in the line of duty by reason of their failure to have secure hand-hold; and that they are therefore instructed that in such case, the employee does not assume the risk of injury, but the risk is carried by the Company. And to further instruct the jury for the plaintiff that
485 it was the absolute duty of the defendants to have and maintain a safe hand-hold at the top of the car in question at the time in question, to-wit, 15th day of March, 1913, and a failure so to do was negligence on the part of the said companies, as a matter of law.

Whereas, as petitioners believe and have insisted and now insist, that in this suit, based upon the Federal Safety Appliance Act, it was prejudicial error to your petitioners, the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company for said instructions to have been given in charge to the jury, because they do not embody the law, and your petitioners believe, and respectfully suggest that the rightfulness of the giving of said instructions presents a federal question, pure and simple, and one which should be finally determined by the Supreme Court of the United States.

And the said judgment of the supreme court of Mississippi denied the appellants, the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company, their rights and privileges under the section of the federal statute, and under the constitution and laws of the United States.

Wherefore, petitioners pray the allowance of a writ of error with supersedeas, returnable in the Supreme Court of the United States, and for citation and supersedeas. Especially presented herewith an assignment of error to be presented and urged in the Supreme Court of the United States.

And as in duty bound petitioners will ever pray.

ILLINOIS CENTRAL RAILROAD COMPANY,
YAZOO & MISSISSIPPI VALLEY RAILROAD
COMPANY,
CANTON, ABERDEEN & NASHVILLE RAIL-
ROAD COMPANY,
CHICAGO, ST. LOUIS & NEW ORLEANS RAIL-
ROAD COMPANY,

By ROBT. B. MAYES, *Their Attorney.*

486 Let the writ of error with supersedeas issue as prayed for in the foregoing petition.

Given under my hand this the 22nd day of July, 1916.

SYDNEY SMITH,
*Chief Justice of the Supreme Court of the
State of Mississippi.*

487 THE UNITED STATES OF AMERICA,
State of Mississippi, County of Hinds:

Know all men by these presents, that we, the Illinois Central Railroad Company, the Yazoo & Mississippi Valley Railroad Company, the Canton, Aberdeen & Nashville Railroad Company, and the Chicago, St. Louis & New Orleans Railroad Company, principals, and United States Fidelity and Guaranty Company of Baltimore, a surety company authorized by the laws of the United States of the State of Mississippi, to become surety upon appeal bonds, as surety, are held and firmly bound unto George R. Williams, in the penal sum of Eighteen Thousand (\$18000.00) Dollars, to be paid to the said obligee, his heirs, executors, administrators or successors, and to the payment of which well and truly to be made, we bind ourselves and our successors jointly and severally firmly by these presents.

Sealed with our seals and dated this the 22nd day of July, 1916.

The condition of this obligation is such that whereas the above named plaintiffs in error, the Illinois Central Railroad Company, the Yazoo & Mississippi Valley Railroad Company, the Canton, Aberdeen & Nashville Railroad Company and the Chicago, St. Louis & New Orleans Railroad Company, hath prosecuted a writ of error in the Supreme Court of the United States, to reverse the judgment rendered by the supreme court of Mississippi, in the case numbered 18401 on the dockets and in the records of the last mentioned court, wherein George R. Williams is plaintiff and the said Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company are defendants, and the said Canton, Aberdeen & Nashville Railroad Company and the Chicago, St. Louis & New Orleans Railroad Company are sureties on the appeal bond, by which the case was carried from the state court of original jurisdiction to the said state supreme court, and the judgment of the said state supreme court was a joint one against both of the principal obligors herein.

488 Now, if the above named plaintiff in error, the Illinois Central Railroad Company, the Yazoo & Mississippi Valley Railroad Company, the Canton, Aberdeen & Nashville Railroad Company, and the Chicago, St. Louis & New Orleans Railroad Company, shall prosecute the said writ of error to effect and answer all costs and damage, if they shall fail to make good their plea, then this

obligation shall be void; otherwise, it shall remain in full force and effect.

ILLINOIS CENTRAL RAILROAD COMPANY,
YAZOO & MISSISSIPPI VALLEY RAILROAD
COMPANY,
CANTON, ABERDEEN & NASHVILLE RAIL-
ROAD COMPANY,
CHICAGO, ST. LOUIS & NEW ORLEANS RAIL-
ROAD COMPANY,

By R. B. MAYES, *Their Attorney.*

UNITED STATES FIDELITY & GUARANTY
CO. OF BALTIMORE, MD.,

By L. N. JULIENE, *Att'y in Fact,*

By GREEN & GREEN, *Att'ys in Fact.*

[SEAL.]
Surety.

The above bond and sureties approved July 22nd, 1916.

SYDNEY SMITH,

Chief Justice of Supreme Court of Mississippi.

489 ILLINOIS CENTRAL RAILROAD COMPANY, YAZOO & MISSIS-
SIPPI VALLEY RAILROAD COMPANY, Plaintiff in Error,

vs.

GEORGE R. WILLIAMS, Defendant in Error.

In the Supreme Court of the United States.

Assignment of Errors.

Writ of Error to the Supreme Court of Mississippi.

The plaintiffs in error, the Illinois Central Railroad Company, the Yazoo & Mississippi Valley Railroad Company, and the Canton, Aberdeen & Nashville Railroad Company and Chicago, St. Louis and New Orleans Railroad Company, show to the court that there are manifest errors prejudicial to them, apparent of record in the proceedings, decisions and final judgments of the supreme court of the State of Mississippi in the above entitled matter and case, in this, *vo-wit*:

First. The supreme court of Mississippi erred in deciding and holding that it was not error on the part of the court of original jurisdiction to give in charge to the jury the following instruction, *viz*:

Instruction No. 1. The court instructs the jury for and on behalf of the plaintiff as follows: That under Section 2 of the Act of Congress, approved April 14, 1910, it became and was the duty of the defendant companies, on the 15th day of March, 1913,
490 to equip their cars which they were using on their rail-
roads, with proper hand-holds, and it was the express duty of the defendants, as to all cars having ladders upon them, to have

secure hand-holds or grab irons on the roofs, at the top of such ladders, and a failure to have secure hand-holds on the roofs, at the top of such ladders was a violation of the Act of Congress which made the defendant companies liable in damages to any employe who was injured in consequence of the violation of this law, and who at the time of such injury was engaged in the line of duty to defendant. Now, therefore, if you believe from the evidence in this case that George R. Williams, plaintiff, in the line of his duty, went upon the car in question, in the yards of defendant, being used by them, and that by reason of a defective hand-hold at the top of said car, he fell and was injured, you will return a verdict in favor of the plaintiff."

And it so erred because the act of congress referred to did not require the equipment of the cars with hand-holds and grab irons on the roof, as the instruction directed, for the reason that the act of congress referred to requiring this was not in force on the 14th day of March, as stated in the instruction.

Second. The supreme court of Mississippi further erred in deciding that it was not error on the part of the court of original jurisdiction to give in charge to the jury the following instruction, viz:

"Instruction No. a. The court further instructs the jury for 491 and on behalf of the plaintiff, as follows: That it is provided by Section 4 of the Act of April 4, 1910, and as applied to these defendant companies, that if they move or haul, or handle with commercial cars, any car which has a ladder thereon and which has not secure hand-holds on the roof at the top of such ladders, that such car is then used at the sole risk of the companies, and they are made absolutely liable in damages to any employe who is injured in the line of duty by reason of their failure to have a secure hand-hold; and you are therefore instructed that in such cases, the employe does not assume the risk of injury, but the risk is carried by the company."

Third. The supreme court of Mississippi further erred in deciding that it was not error on the part of the court of original jurisdiction to give in charge to the jury the following instruction, viz:

"Instruction No. 4. The court instructs the jury for the plaintiff that it was the absolute duty of the defendants to have and maintain a safe hand-hold at the top of the car in question, and a failure so to do was negligence on the part of the said companies, as a matter of law."

In all of the particulars above stated the supreme court of Mississippi denied to plaintiffs in error their rights under said acts of congress and under the constitution and laws of the United States.

Plaintiffs in error, therefore, pray the reversal of the final 492 judgment of the supreme court of Mississippi and should the court fail to find the dismissal of the suit warranted by the record, then plaintiffs in error pray for the reversal of the judgment of the supreme court of Mississippi, and the award of a new trial, so that justice may be done.

And as in duty bound plaintiffs in error will ever pray.

ROBT. B. MAYES,

Attorneys for the Plaintiffs in Error.

493 THE UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the Honorable the Judges of the Supreme Court of Mississippi, Greeting:

Because in the record and proceedings, and also in the rendition of judgments of a plea which is in the said supreme court of Mississippi before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in said state, between George R. Williams, plaintiff in the court of original jurisdiction, and the Illinois Central Railroad Company, and the Yazoo & Mississippi Valley Railroad Company, the defendants in said court; and the Canton, Aberdeen & Nashville Railroad, and the Chicago, St. Louis and New Orleans Railroad Company, surety on the appeal bond, given by the said railroads to appeal said cause from the court of original jurisdiction to the supreme court of Mississippi, decided by the supreme court of Mississippi against the said railroads and the said surety on their bond, wherein was drawn in question in said suit the proper construction of an act of Congress commonly known as the federal Safety Appliance Act, approved April 14, 1910, with the amendments thereto, and in the giving in charge to the jury by the court of original jurisdiction and the approval thereof by the supreme court of Mississippi certain charges involving the construction of the said Safety Appliance Act, as shown by the assignments of error; manifest error happened to the great damage of the Illinois Central Railroad Company, and the Yazoo and Mississippi Valley Railroad Company, and the Canton, Aberdeen & Nashville Railroad Company and the Chicago, St. Louis and New Orleans Railroad Company, surety on the appeal bond, as by their complaint appears.

494 We being willing for the error, if any hath been, to be duly corrected, and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same in the said supreme court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein, to correct that error, what of right, according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 22, day of July, in the year of our Lord one thousand nine hundred and sixteen.

[Seal U. S. District Court, Southern District of Mississippi.]

L. B. MOSELEY,

*Clerk of the United States District Court
for the Southern District of Mississippi*

Allowed, to operate as a supersedeas by

SYDNEY SMITH,

Chief Justice of the Supreme Court of Mississippi.

495 STATE OF MISSISSIPPI,
Hinds County:

I, Geo. C. Myers, Clerk of the Supreme Court of the State of Mississippi, being the Court of said State which has highest, last and final jurisdiction of all pleas and causes pending in the Courts of said State, do hereby certify that the foregoing pages contain full, true, and correct copies of the papers each and all of them, constituting the record in the said Supreme Court of the State of Mississippi, in the case of Illinois Central Railroad Company, vs. George R. Williams, No. 18401 on the docket of said Court, as the same appear of record on file in said Court.

Given under my hand with the seal of said Court affixed, at office in the City of Jackson, Mississippi, this the 11th day of August A. D. 1916, and in the one hundred and fortieth year of the Independence of the United States of America.

[Seal State of Mississippi Supreme Court.]

GEO. C. MYERS,

Clerk Supreme Court of Mississippi.

I, Geo. C. Myers, Clerk of the Supreme Court of Mississippi further certify that in obedience to the writ of error filed in my office in the above stated cause I have this day forwarded to the Clerk of the United States Supreme Court at Washington, D. C., by express prepaid the record in said cause as commanded in said writ.

Given under my hand with the seal of said Court affixed at office in the City of Jackson, Miss., this the 12th day of August A. D. 1916.

[Seal State of Mississippi Supreme Court.]

GEO. C. MYERS,

Supreme Court Clerk.

Endorsed on cover: File No. 25,467. Mississippi Supreme Court. Term No. 637. Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company, and Canton, Aberdeen & Nashville Railroad Company and Chicago, St. Louis & New Orleans Railroad Company, their sureties, plaintiffs in error, vs. George R. Williams. Filed August 28th, 1916. File No. 25,467.

Office Supreme Court, U. S.

FILED

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JAMES D. MAHER

CLERK

No. 637

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1916

**ILLINOIS CENTRAL RAILROAD COMPANY and
YAZOO & MISSISSIPPI VALLEY RAILROAD
COMPANY**

Plaintiffs in Error

vs.

GEORGE R. WILLIAMS, Defendant in Error

**IN ERROR TO THE SUPREME COURT OF THE
STATE OF MISSISSIPPI**

CHARLES C. LEFORGEE

Attorney for Plaintiffs in Error

**MR. BLEWETT LEE
MR. CHARLES N. BURCH
MR. ROBERT B. MAYES
of Counsel**

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**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1916

No. 637

**ILLINOIS CENTRAL RAILROAD COMPANY and
YAZOO & MISSISSIPPI VALLEY RAILROAD
COMPANY**

Plaintiffs in Error

vs.

GEORGE R. WILLIAMS, Defendant in Error

**IN ERROR TO THE SUPREME COURT OF THE
STATE OF MISSISSIPPI**

In the last two briefs of the four filed herein by the defendant in error certain authorities are cited, and arguments made thereon so wholly at variance with the position taken by counsel for defendant in error in the two briefs first filed in this cause, that we deem it necessary to submit for the consideration of this court the following:

I

THE ISSUES IN THE CASE

The conflict in the theories advanced in behalf of the defendant in error in the two briefs first filed in his behalf, and the total abandonment of both of those theories in the reply brief is perhaps only important as

disclosing uncertainty by defendant in error's counsel in finding a position that will support the judgment sustained in the Supreme Court of Mississippi.

~~We therefore again direct this court's attention to~~ the following recitals from the briefs filed in behalf of defendant in error.

"Accordingly Congress passed the act approved April 14, 1910, ~~which is the act under which this action was prosecuted to a judgment~~, although the liability of the company is undisputed if we were tested by the act of 1893." (Page 9 of Mr. Harrington's brief.)

"The declaration states a cause of action under the Safety Appliance laws passed by Congress" (Pages 1 and 2 of Mr. Harrington's Brief.)

~~"The pleadings and evidence in this case make out a cause of action under the Safety Appliance Law. They did make out a cause of action under Section 4 of the Act of 1893. They clearly and unmistakably make out a cause of action under Section 2 of April 14, 1910."~~ (Page 2 of Mr. Harrington's brief.)

The above is quoted to disclose that the unqualified contention of counsel for defendant in error is, that the *sole* right of recovery in this case is based upon the Federal Safety Appliance Act and that the single issue now here presented upon the merits of this case *is not a common law liability* but a right by the defendant in error to recover under the Federal Act for injuries received in 1913 because of a defective grabiron in the roof over a side ladder on a car.

An examination of the original complaint or declaration filed by defendant in error upon which his cause of action was based will disclose that it only stated a cause of action under the Federal Safety Appliance Act. Quite aside from the charge that the Plaintiffs in Error and the Defendant in Error were engaged in Interstate Commerce, it will be noted that the only *negligence* charged is that the carrier "carelessly, negligently and unlawfully kept and maintained said grabiron in a loose, shaky, unsafe, unfastened and insecure con-

dition where the other end was loose and not held in place by any bolt or anything else and where it was in a weak, shaky, unsafe and dangerous condition."

The declaration at no place charges, nor indeed is there any proof that the *car* complained of even though engaged in interstate commerce was a car upon which a secure handhold was *required* upon the roof of the car as provided in the Supplemental Act of 1910, and therefore fails to really state a cause of action under the Supplemental Act of 1910 and certainly this action cannot be tortured into a statement of an action at common law.

Intimation is made by defendant in error in his reply brief herein and quite aside from his original position, that the Supreme Court of Mississippi may have sustained the judgment upon a common law charge of negligence. This, however, is begging the question really submitted for this court's consideration. This claim is without force, however, and we submit is an argument to avoid rather than fairly meet the very plain and clear issue here presented.

It will be noted that the complaint does not charge the Master with the breach of any common law duty. To state a common law duty by Master to Servant in relation to defective appliances, the master should not be charged as an insurer. The master is only required to use such ordinary care and diligence as may be reasonable in view of the work to be performed (Cyc. Vol. 26 page 1102 and cases there cited). The master's duty, if one be charged in this complaint, is therefore not one imposed at common law but it is the absolute duty imposed by Congress under the Safety Appliance Act.

In an action by a servant against his master to recover damages for injuries caused by defective or dangerous appliances or places it must be alleged in the complaint that the Master knew or ought to have known of the alleged defects. Of course it is perhaps not necessary that this appear by direct averment, but it must appear as a charge either by direct averment or from the facts stated (26 Cyc. 1390 and cases there cited).

This above allegation is neither directly nor indirectly made in the complaint and there is therefore no breach of any common law duty stated against the Master's, the only one charged, is the imperative duty placed upon the carrier by the Federal Safety Appliance Act.

This right of action therefore (if one be stated in the complaint) must be under the Supplemental Safety Appliance Act of 1910 for it is the only act of Congress requiring the appliance, the defective condition of which caused defendant in error's injury.

II

THE ACTS OF CONGRESS AND THE ORDERS OF THE INTERSTATE COMMERCE COMMISSION IN RELATION TO GRAB IRONS ON THE ROOFS OF CARS.

The Supplemental Safety Appliance Act passed by the Federal Congress April 14, 1910 (set out upon page 24 of our original brief) under section 2 provides in substance that on and after July 1, 1911, it shall be unlawful for common carriers within the act to use any car subject to the provisions of that act not equipped with certain appliances: namely, "All cars must be equipped with secure sill steps, efficient hand brakes. All cars requiring secure ladders and secure running boards and all cars having ladders shall also be equipped with secure handholds and grabirons on their roofs at the top of such ladders."

Section 3 of this same act made no provision for any appliances. Section 3 will be found to provide for standardizing the appliances with which cars are to be equipped and provides (See page 25 of original brief) that the Interstate Commerce Commission within six months after the passage of the act shall "*designate the number, dimensions, location and manner of application of the appliances provided for by Section 2 of this act,*" and further providing for notice of the order by the Commission to the carrier. Section 3 also provides that "*thereafter said number, location, dimensions and man-*

ner of application” shall remain as the standard of equipment to be used on all cars subject to the provisions of the act, unless changed by the order of the Commission.

Under a *proviso* attached to Section 3 it is there stated “that the Interstate Commerce Commission may upon full hearing and for good cause *extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of cars actually in service upon the date of the passage of this act.*”

Section 4 of the Act provides in substance that any carrier using “any car subject to the requirements of this act not equipped as provided in this act” shall be subject to a named penalty. To this section there is also attached a *proviso* to the effect that “where a car shall have been properly equipped as provided in this act * * * and such equipment shall have become defective or insecure while upon the road it may be hauled, when first discovered, to the nearest available point for repair, if such movement is necessary to make repairs, it shall be at the risk of the carrier and nothing in Section 4 is to be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employe caused to such employe by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure, or which is not maintained in accordance with the requirements of this act.”

Section 6 provides that it is the duty of the Commission to enforce the act and that all powers formerly given to the Commission are extended to this act.

In this connection it would be well to note that Section 7 of the original Safety Appliance Act of 1893 provided as follows:

“The Interstate Commerce Commission may from time to time upon full hearing and for good cause extend the period within which any common carrier *shall comply with the provisions of this Act.*”

Upon the 10th day of October 1910 the Interstate Commerce Commission entered an order which relates exclusively to the standard height of drawbars and is not material in this case, except as disclosing the power of the Interstate Commerce Commission to take exclusive charge of the application of appliances under the Safety Appliance Acts.

Upon the 13th day of October in 1910 the Interstate Commerce Commission entered another order which had distinct hearing upon the Act of 1910 and purports to set out the various "numbers, dimensions, locations and manner of application of the appliances designated in the Act of 1910 and so far as material here will be found to contain the following:

"IN THE MATTER OF DESIGNATING THE NUMBER, DIMENSIONS, LOCATION AND MANNER OF APPLICATION OF CERTAIN SAFETY APPLIANCES"

"Where-as by the third section of an Act of Congress approved April 14, 1910 entitled" Etc.: (reciting the title to the act and the whole of Section Three), and after stating that certain hearings had been had by the Commission appears the following:

"It is ordered. That the number, dimensions, location and manner of application of the appliances provided for by *Section Two* of the Act of April 14, 1910 and section four of the Act of March 2nd, 1893 shall be as follows:"

Then follows the specifications fixed by the Commission for the equipment of cars, clearly defining the cars *requiring* ladders, handholds, and all appliances named in Section Two, as well as the number, dimensions, location and manner of application of such appliances.

No time was fixed for the performance of this work by the carrier.

After the entry of the above mentioned order by the Commission upon the 13th day of October in 1910 the Interstate Commerce Commission in its report to Con-

gress upon the 21st day of December in 1910 (See 24th Annual Report of the Interstate Commerce Commission of 1910, page 42) reported the following:

"By an act approved April 14, 1910, the Commission was required within six months thereafter to designate the number, dimensions, location, and manner of application to cars used in interstate commerce of the appliances provided for by Section 2 of that act and Section 4 of the Act of March 2, 1893, such appliances including grabirons, ladders, sill steps, hand brakes, running boards, and other similar equipment. The matter was taken up by a joint committee, representing the Commission, railroad employees, and the carriers, which held numerous meetings, considered the matter with great care, and virtually agreed upon the regulations to be adopted. After a full hearing the Commission, on the 13th of October made an order prescribing the regulations to be observed, which are, by the terms of the act, made standards for future observance.

The attention of the Congress is respectfully called to the fact that *the Commission's power to extend the time within which any common carrier may comply with these regulations is expressly limited to equipment which was in use when the law was passed.* At that time there were many cars and locomotives in process of construction under contracts which included certain specifications. In the nature of the case *neither the carriers nor the car builders could know what regulations the Commission would prescribe, and, of course, could not anticipate the particular and detailed requirements.* In short, a large number of cars which have come into use since April 14, and which are now being delivered to the carriers, do not in all respects conform to the standards which

the Commission by its order has prescribed. Inasmuch as the Commission is without authority to grant relief as to this class of equipment, it is respectfully recommended *that the law be so modified as to authorize the Commission in its discretion and after hearing to extend the time for compliance with the prescribed standards as to such equipment as shall be in use on July 1, 1911, the date when these standards become obligatory by the terms of the act in question.*" (Italics ours.)

Accordingly upon the 4th day of March in 1911 Congress in an act in relation to Sundry Civil appropriations for the fiscal year ending June 30, 1912, caused an amendment to be there made to the Act of 1910 (see p. 39 of our original brief) by which the power of the Interstate Commerce Commission to extend the period within which the carrier should comply with the Act of 1910 was made to include certain cars other than named in the Act of 1910, by providing that the Commission's power to extend the period,—“Shall apply to cars actually placed in service between the date of the passage of the said act and the first day of July, 1911, in the same manner and to the same extent that it applies to cars actually in service upon the date of the passage of the act.”

Immediately, or to be exact, nine days after the passage of the above mentioned act and about three and a half months before July 1, 1911, the Commission upon the 13th day of March in 1911 entered an order for an extension of the period within which carriers should comply with the act of 1910. This order is entitled,

“IN THE MATTER OF THE EXTENSION OF THE PERIOD WITHIN WHICH THE REQUIREMENTS OF AN ACT ENTITLED” etc., (naming the act of 1910) and

"Whereas, pursuant to the provisions of the act above stated the Interstate Commerce Commission by its orders duly made and entered on October 13, 1910 * * * had designated the number, dimension, location and manner of application of the appliances provided for by Section 2 of the act aforesaid * * *

And Whereas the matter of *extending the period within which common carriers shall comply with the provisions of Section 2 of the act first aforesaid being under consideration* upon full hearing and for good cause shown" ordered that the period of time within which carriers should comply with Section 3 of the act be extended.

Under Section "f" of this order it is provided as follows:

"Carriers are granted an extension of five years from July 1, 1911, to change and apply all other appliances on freight train cars to comply with the standards prescribed in said order, except that when a car is shopped for work amounting to practically rebuilding body of car, it must then be equipped according to the standards prescribed in said order in respect to *handholds*, runningboards, ladders, sill-steps and brakestaffs; *Provided*, that the extension of time herein granted is not to be construed as relieving carriers from complying with the provisions of Section 4 of the Act of March 2, 1893, as amended April 1, 1896, and March 2, 1903."

A second order was entered upon the same day by the Commission (page 53 original brief). It is entitled—

"IN THE MATTER OF DESIGNATING THE NUMBER, DIMENSIONS, LOCATION, AND MANNER OF APPLICATION OF SAID SAFETY APPLIANCES" and then reciting,—

"Whereby by the third section of the Act of Congress approved April 14, 1910, entitled" * * * * . (Describing the Act of 1910)

"Now, therefore, in pursuance of and in accordance with the provisions of said Section 3 of said Act and superseding the Commission's order of October 13, 1910, relative thereto",

It is ordered that the number, dimensions, location and manner of application of the appliances provided for by Section 2 of the Act of April 14, 1910, shall be as follows:

Then follows specifications made by the Commission for every type of car or engine known to the railway service.

An examination of this order clearly discloses that a large number of cars did not *require* either ladders or handholds or grabirons on the roof of the cars at the top of such ladders.

The above and foregoing is the legislation including the orders entered by the Interstate Commerce Commission affecting the rights of the parties in this suit.

III

CONSTRUCTION OF THE SUPPLEMENTAL SAFETY APPLIANCE ACT OF 1910 AND THE EFFECT OF THE ORDERS ENTERED BY THE INTERSTATE COMMERCE COMMISSION UNDER SUCH ACT.

There are really but two questions in this case and they are:

1st: Under the Supplemental Safety Appliance Act of 1910, did Section Two of that Act provide in express terms that handholds upon the roofs of cars must, under all circumstances, and at all events, be made secure by July 1, 1911, and:

2d: Did the Interstate Commerce Commission in pursuance of a lawful authority in it vested, in whole

or in part, suspend the operation of *Section Two* by its order extending the period named in that act, five years or until July 1st, 1916.

Counsel for defendant in error concede that this, upon the merits, is the question to be determined. If the record in this case discloses that a recovery was sought for the breach of some common law duty between Master and Servant, and that such question was involved and considered by the State Court in affirming this judgment, then of course this case has no place in this forum, but it is disclosed by the record and it is the theory of counsel for defendant in error (Page 2 herein), that the Defendant in error's cause of action is based solely upon the Federal Safety Appliance Act and particularly upon the Supplemental Act of 1910. While the doctrine of estoppel will not perhaps apply because of the statements by counsel for defendant in error we do assume in the light of the record and the above statements by counsel that it is rather late and somewhat inconsistent for Defendant in Error to now insist upon a common law liability. Therefore we confine our argument to the defendant in error's right to recover solely under the Supplemental Act of 1910.

We respectfully submit that from the wording of the act as we have argued in our original brief herein (Pages 32 to 45) the clear positive language of the act fully and completely sustains our claim that Section Two of the Supplemental Act of 1910 became embodied in and by the express wording of the act was a part of Section Three. That the Act of 1910 contemplated three things: First, certain safety appliances upon railroad cars as named and provided in *Section Two and Section Two only*: 2d That the number of the appliances, the dimensions, the location and the manner of application of appliances named in Section Two was to be determined by the Interstate Commerce Commission and by no other authority, and 3d That the Commission was given authority by that act of Congress to extend the period within which the carriers

should supply the appliances named in Section Two to be placed upon the cars in the number, of the dimension, at the places upon the cars and in the manner to be named by the Commission under Section Three. To hold otherwise is in violation of the plain unequivocal words employed by Congress and would invoke an unnecessary and unreasonable hardship upon the carrier, and we submit that if it be admitted, as indeed it is, that Congress intended to and did give to the Commission the power under Section Three to fix and determine what the "number, dimensions, location and manner of the application of the appliances" named in Section two should be, no reason can be advanced under the clear wording of the act for a denial of the Commission's authority to further say within what *time* this equipment should be so placed upon the cars. This proposition can only be answered in one of two ways: 1st. That July 1st, 1911, was a certain, arbitrary day fixed by Congress at which date all the cars of every carrier should be equipped with the appliances named in Section 2, This, as disclosed by the report of the Commission upon November 2d, 1915, it was physically impossible to do and to so hold would invite an attack upon the very legality of the act as requiring a most unreasonable and impossible thing to be done. It would be imposing a task that could no more be accomplished within the time named in the act than it could have been accomplished had Congress in passing the law April 14th, 1910, provided that upon March 1st, 1910, the equipment should be in place. As a second answer to the above proposition it might be said, as they do intimate, that upon July 1st, 1911, the equipment named in Section Two should be in place and at a later time change the equipment to comply with the "standard" as provided by the Commission under Section 3. The very statement of the last suggestion is we believe sufficient to disclose its absurdity without argument or comment. Certain it is that after the passage of this act the Commission construed the Act

of 1910 as meaning that the Commission had the authority to and did "*extend the period*" named in Section 2 of the act for five years. An examination of the order of March 13, 1911, evidences this so strongly that it seems to us without doubt.

In the above mentioned order (March 13th, 1911,) it will be noted (Page 29 of our original brief) that in a recital by the Commission as to the matter about which an order is to be entered, it says—

"IN THE MATTER OF THE *EXTENSION OF THE PERIOD* WITHIN WHICH THE REQUIREMENTS OF AN ACT ENTITLED" ETC. (Naming the act of 1910) and

"Whereas pursuant to the provisions of the act above stated, the Interstate Commerce Commission by its orders * * * has designated the number, dimensions, location and manner of application of the appliances *provided for* by Section 2 of the act aforesaid * * * " and

"Whereas the *matter of extending* the period within which common carriers shall comply with the provisions of *Section Two* of the Act first aforesaid *being under consideration*" etc., and

"It is ordered, that the period of time within which said common carriers shall comply with the provisions of Section Three of said act in respect to the equipment of cars in service on the first day of July, 1911," *be extended.*

Under Section "F" it is ordered: "Carriers are granted an *extension of five years* from July 1, 1911, to change and apply all other appliances upon freight cars to comply with the standards," etc.

No time was designated in Section Three when the terms thereof should go into effect. A time certain was

fixed in Section Two. No extension was necessary under Section Three—the only section that required an “*extension of the period*” was Section Two.

Since the entry of that order the Commission has annually made its report to Congress.

We again direct attention to the report for 1910 (Page 7 herein).

In 1911, (Page 82, Twenty-fifth Annual Report) the Commission reported—

“The most important acts of the Commission in the administration of the Safety-appliance laws during the past year were the promulgation of the orders of March 13, 1911. These orders definitely fixed the standards as to the number, dimensions, location, and manner of application of the appliances required by section 2 of the act of April 14, 1910, and section 4 of the act of March 2, 1893, on all equipment placed in service subsequent to July 1, 1911, and extended the period within which all equipment actually in service on July 1, 1911, should be made conformable to its provisions.

It is gratifying to observe the progress made throughout the country in the matter of equipment of cars and locomotives in accordance with the provisions of this order. Generally speaking the standards prescribed by the Commission meet the approbation not only of the employees but of the officials of the railroad subject to the law.”

In 1912 (Page 57 Twenty-sixth Annual Report) the Commission said—

“By an order dated March 13, 1911, issued pursuant to the provisions of the act of April 14, 1910, the Commission prescribed the standards to be observed by the carriers in the mat-

ter of certain safety appliances, an extension of five years from July 1, 1911, being granted, as to some of the appliances, in which the railroads should render their equipment conformable to the standards specified. Up to the present time, however, but a small percentage of the total number of cars, to which the order is applicable, have been equipped, and unless this work is expedited it can not be completed within the time allowed by the Commission's order."

In 1913 (Page 58 Twenty-seventh Annual Report) the Commission reported—

"Since the publication of the last annual report a considerable number of cars have been made to conform to the standards prescribed by the Commission in its order of March 13, 1911, pursuant to the provisions of the act of April 14, 1910. The ratio of the cars already equipped, however, to the total number of cars to be equipped is still unduly small, and unless the work of equipment is greatly expedited it can not be completed within the time prescribed."

In 1914 (Page 46 Twenty-eighth Annual Report) the Commission reported—

"The period in which equipment other than freight cars was to have been made conformable to the standards fixed by the Commission's order of March 13, 1911, pursuant to the act of April 14, 1916, has now expired, and conditions generally in this respect are satisfactory. As to freight cars, however, the number equipped as compared with the number to be equipped is disproportionately small, and only the exercise of the greatest diligence will enable the carriers to standardize their freight equipment within the interval that yet remains."

We have recited in detail the Commission's report in 1915 (Page 42, Original brief).

It is, we insist, clearly evident that the Commission, the carrier and the employee adopted a construction of this act which had for an ultimate result the equipment of cars with the appliances named in Section 2 of the Act of 1910 by July 1st, 1916, and later extended one year. This was what the Commission required, it was what the carrier endeavored to do, it was what the employee agreed to and while the construction of the act by either is not controlling upon this court, it is most certain that the Commission intended to grant an extension and that the carriers adjusted their operations to comply with that rule. Under such circumstances we feel that the expression of this court in *Pennell v. Philadelphia RR. Co.*, 231 U. S. 675 is most pertinent.

"If it is not mandatory, as we think it is not, of an automatic coupler between the engine and tender the contentions of plaintiff are without foundation. We need not refer to them with further detail except to say that the custom of the railroads could not, of course, justify a violation of the Statute, *but that custom, having the acquiescence of the Interstate Commerce Commission* is persuasive of the meaning of the Statute." (Italics ours.)

The claim of defendant in error in this case leads to, and simply means, this, that Section Two of the Act of 1910 shall be held and taken as compelling all carriers on and after July 1st, 1911, to have all cars equipped with secure sill steps and efficient handbrakes, secure ladders and secure running boards and with secure grabirons upon the roofs of cars at the tops of such ladders; it is by counsel claimed that this is the plain wording of the section and cannot otherwise be read nor construed by the courts, the Commission or the carrier. This we insist is not supported by the

terms employed in the entire act. Section 2 should be read with the other sections of the act, but if Section Two is to be considered alone it should be considered and construed according to the known rules of this court which lead to a far different result from the one claimed by defendant in error, which is in violation of the very spirit of the act, it is against the working plan of the carriers acquiesced in and in fact outlived by the Commission; it would result in imposing a penalty and burden upon the carrier which the most casual observer knows it would be impossible to escape. It would require the performance of a task the carrier could not perform by the time named, viz., July 1st, 1911.

When President Harrison first addressed Congress upon the necessity of legislation for Safety Appliances upon the cars of interstate carriers, he knew that one of the big elements to be considered was *time*. In his first message Dec. 3d, 1889 (Messages and papers of President Vol. 9 P. 51), he said:

"Time will be necessary to make the needed changes, but an earnest and intelligent beginning should be made at once."

In his second message of December 1st, 1890, he said (Messages and Papers of Presidents, Vol. 9 P. 126):

"The chief difficulty in the way is to secure agreements as to the best appliances, simplicity, effectiveness and cost being considered. This difficulty will only yield to legislation, which should be based upon full inquiry and important tests."

Again in his message of Dec. 9th, 1891, he said (Messages and Letters of President Vol. 9, P. 208):

"A law requiring of every railroad engaged in Interstate Commerce the equipment each year of a given per cent of its freight cars with automatic couplers and air brakes and couplers would very greatly reduce the fearful death rate among railroad employees."

The man to whom credit must be given for the first legislation upon Safety Appliances realized that *time* was a tremendous factor in the solution of this really great problem, Congress knew it, and while every one knew what appliances were needed, it required experts to determine the "*dimensions, the number, location and manner of application, and the time within which such appliances could be installed.*"

Upon July 1st, 1911, there were in service about 2,000,000 cars. (Report of Commission in 1915.)

In 1915 when the Commission again extended the period from July 1st, 1915, to July 1st, 1916, it was found by the Commission that after five years of work by the carrier under the supervision of the Commission, only about 82 per cent of these cars would be equipped or removed from the service by July 1st, 1916, and of this percentage over 480,000 were to be removed from service and that over 300,000 would remain unequipped upon that date. (Report of Commission in 1915.)

In 1912 the Commission informed Congress that:

"Up to the present time, however, but a small percentage of the total number of cars, to which the order is applicable, have been equipped, and unless this work is expedited it cannot be completed within the time allowed by the Commission's order."

In 1913 again the Commission reported that:

"The ratio of the cars already equipped, however, is still unduly small, and unless the work of equipment is greatly expedited it cannot be completed within the time prescribed."

The history of the attempt to carry the Act of 1910 into effect clearly discloses the construction of the act by the Commission as against Defendant in Error's claim. Courts will follow the construction of a statute by the executive department whose duty it is to carry out its provisions, *United States v. Mayer*, 12 Wall. 177; *Fairbanks v. United States*, 181 U. S. 307; *Brown*

v. *United States*, 113 U. S. 571. And if there be ambiguity or doubt as to the meaning of an act, then the practice of a department of the Government, begun early and long continued, is in the highest degree persuasive, if not absolutely controlling, in its effect. *United States v. Graham*, 110 U. S. 292. *United States v. Alger*, 152 U. S. 394; *Fairbanks v. United States*, 181 U. S. 310; *Houghton v. Payne*, 194 U. S. 99.

Under the construction sought by Defendant in Error of the Act of 1910, the carrier upon the very face of the Commissions' showing could not perform the task imposed upon it. At the most the carrier was compelled, between October 13th, 1910, and July 1st, 1911, to complete and finish the work assigned in Section 2. Had the carrier bent its every effort without considering certain havoc to commerce in so doing, it would have resulted in failure. If the construction be given this act for which we contend, the full purpose of the act will be accomplished. This is the construction given the act by the Commission, it is the plan upon which for over five years the carrier has been working, and to which the employee consented. (Commissions Report 1912.)

Of the two constructions claimed in this cause ours is fair reasonable and with certainty obtains an ultimate and successful compliance with the terms of the act. The other construction is unfair, unreasonable and works an unwarranted hardship upon the carrier.

This court said in *United States v. Trans-Missouri Freight Association*, 166 U. S. 354:

"But there is no canon of interpretation which requires that the letter be followed, when by so doing an unreasonable result is accomplished. On the contrary the rule is the other way and exacts that the spirit which vivifies, and not the letter which killeth, is the proper guide by which to interpret the statute," and

"Nothing is better settled than that statutes should receive a sensible construction such as will effectuate

the legislative intention, and if possible, so as to avoid an unjust or absurd conclusion." Citing, *Church of Holy Trinity v. United States*, 143 U. S. 457; *Henderson v. Wickham*, 92 U. S. 259; *United States v. Kirby*, 74 U. S. 482; *Oats v. First National Bank*, 100 U. S. 239.

In *Sioux City & St. Paul R. Co. v. United States*, 159 U. S. 360, this court in an opinion by Mr. Justice Harlan, quoting from *Lew. Ow Bew v. United States*, 144 U. S. 547, said:

"Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the Legislative intention and if possible, *so as to avoid an unjust or absurd conclusion.*" (Italics ours.)

Therefore in the case at bar if effect be given to these rules of statutory interpretation, can it be supposed that the carriers were required to supply the equipment named in Section 2 within the unreasonable time claimed by defendant in error.

IV

CORRECTION OF ERROR IN FIRST BRIEF

In our former brief we used an expression which we wish to correct.

Upon page 39 of our original brief appears the statement or at least the intimation that the *first* order of the Commission fixing the "number, dimensions, location and manner of the application of appliances was March 13th, 1911. That is not accurate as the *first* order made by the Commission was entered October 13th, 1910 (Page 6 herein) and inasmuch as that order was "superseded" by the order entered upon March 13th, 1911, what was really the Commission's *first* order seems to have been "cast out" as worthy of no further use in the matters it purported to cover, the writer having discovered it in a search caused by the words in the order of March 13th, 1911, wherein the Commission recited "superseding the Commission's order of October 13th, 1910."

The error above mentioned is perhaps not so important as it is used in the original brief to designate the short space of time allotted the carrier to comply with the act of 1910, if therefore the first order is to be taken as the beginning of the period when the carrier could supply the equipment, then the time allowed for the carrier would be five months more than that stated in our former brief. In other words the carrier was allowed from October 13th, 1910, to July 1st, 1911, or about eight and one-half months to accomplish the task set forth in our former brief.

V

AUTHORITIES RELIED UPON BY DEFENDANT IN ERROR

In the briefs filed by Defendant in Error in the first instance, not a single authority was cited really discussing the questions presented in the case at bar. In our reply brief we set forth and cited the case of *Coleman v. Illinois Central Railroad Company* (Page 45 our brief), 155 N. W. Rep., P. 763 as a flat holding by the Supreme Court of Minnesota against our contention upon the Supplemental Act of 1910.

In a "Supplemental Reply Brief" defendant in error has cited two other authorities. The first of these is the case of *Cook v. Union Pacific Ry. Co.* (Iowa) 158 N. W. 521, and it is also against our claim in this case.

An examination of the *Coleman* case, *Supra*, discloses a holding to the effect that the sole purpose of the act of 1910 was to impose upon carriers an absolute duty of maintaining car equipment in safe condition. That after a certain named time it was unlawful to use cars not so equipped; that Section 3 relates to an entirely different branch of the subject from Section 2, and was not in any way intended to qualify Section 2. That Section 3 relates to "standardization", and power was given the Commission to compel the same, and in so doing, it was not intended to suspend the command embraced in Section 2. That any other construction

would mean that Section 2 might have been omitted and Section 3 made the substance "of the whole enactment". That Section 2 must be construed "*as imposing the duty upon railroads of maintaining the car equipment in secure and safe condition for use after July 1, 1911.*"

Upon pages 48 and 49 of our former brief we have commented upon this decision. In addition, however, to what is there said, we wish to add that it is most obvious it was not the intention of Congress to write into this act the Common Law duty of a Master to furnish the servant with safe appliances or to provide him with a safe place to work. Had such been the intention, the Section would certainly have been *general* and its application would have probably followed the common law in fixing the duty of the Master as to *all* appliances upon cars with which the employees worked. The very wording of the act is for the *equipment* of cars with the named appliances and that such *equipment* shall be *secure*. If therefore the construction given this act by the Minnesota court obtains how uncertain the case where these words are involved, "all cars requiring secure ladders * * * shall be equipped with such ladders", etc., and if in a given case it should appear that no ladder was *required*, but if in fact a ladder was upon a car and being defective the employe fell and was injured, then under the holding by the Minnesota court, *the carrier would be liable under the Act of 1910*. If it be contended that the Minnesota Court has reference only to those cars *requiring* secure ladders is it not perfectly clear that any court must go to Section 3 and then to the order of the Commission to find whether the involved car does in fact *require* such ladder and having thus connected Section 2 and 3 shall they be considered together for one purpose and rejected for every other.

At no place in this decision did the Minnesota court discuss or apparently consider either the findings, recitals and orders of the Interstate Commerce Commis-

sion, or the plan and system upon which for five years both the Commission and Carriers had been working out the equipment provided for by Section 2.

In the case of Cook v. Union Pacific RR. Co. Supra, the Supreme Court of Iowa, after reciting Section 2 and 3 of the Act of 1910, in substance holds that grab-irons in the roofs of cars are to be considered apart from any other appliance named in Section 2.

We also note the following:

“It will be noticed that carriers were given more than a year in which to equip their cars with these secure handholds at the top of the ladder before the requirement became binding upon them. This was, no doubt, to enable them to place these handholds in compliance with the statute by the time the statute went into effect. Therefore, many of these cars must have been equipped to comply with this section at the time the act took effect. *Later when the commission had acted and fixed the dimension and location of these handholds, then it became the duty of the carriers to change their handholds to comply with the standard so fixed.* No doubt it was conceived that a change of this character might take some time, so the Interstate Commerce Commission was given power to extend the time for making these changes to comply with the standard fixed by the Commission.” (Italics ours.)

and further the Iowa Court says:

“We must assume that, at the time, all cars that were put in use were supplied with handholds at the tops of ladders to comply with the requirements of Section 2. As to these cars so equipped it was given the Commission to extend the time in which the changes could be made to comply with the standards, so it was provided that the Commission might extend the

period after adopting a standard to enable the carrier to change their equipment to comply with the standard fixed, but only as to cars actually in service upon the date of the passage of the act. It was under this power given the commission that they granted an extension of five years to change and apply these handholds to meet the requirements of the standard fixed by the Commission. (Italics ours.)

What "extension"? No time is named in Section 3. It was only necessary to *fix a time* under Section 3. An *extension* cannot be made where a time has not been fixed. The provision for time (July 1st, 1911,) is in Section 2, and if the purpose of the Commission was only to determine when the standardization should be effective it is certain it could do so without every referring to Section 2 or *extending* the date named in that Section.

The Iowa Court says that

"Section 4 of the Act of 1893 required that *all cars . . .* should be provided with secure grabirons and handholds upon the ends and sides of cars." (Italics ours.)

Section 4 of the Act of 1893 did apply to *all cars*. The act of 1893 did fix July 1st, 1895 (two years), for railroad companies to provide grabirons in the ends and sides of cars for greater security in coupling and uncoupling cars until "otherwise ordered by the Interstate Commerce Commission," and they are the only appliances required in that Section. We are aware of no order by the Interstate Commerce Commission extending the time for grabirons in the ends and sides of cars beyond July 1, 1895.

The Iowa Court further says: "That Section 2 of the Act of 1910 added a further duty in respect to handholds on the roofs of cars at the top of the ladder and prohibited the use of cars without such handholds."

The court does not consider that Section 2 required not only "handholds", but ladders, hand brakes, sill steps, and running boards.

The Court of Iowa evidently assumes that Section 4 of the Act of 1893 and Section 2 of the Act of 1910 are identical in their provisions for the application of grab-irons and require no other appliances.

The act of 1910 did not provide that *all* cars should be equipped with ladders and handholds as did the act of 1893.

The act of 1910 only provided that "all cars *requiring* secure ladders, etc.", and all cars having ladders shall be equipped with secure handholds upon the roofs of such cars.

The Act of 1910 gave the Commission authority to determine what cars *required* secure ladders and until this was determined there was no necessity for furnishing ladders or handholds under the Act of 1910 and to determine what cars *required* the equipment, if handholds and ladders were not required certainly the act is not to be construed as requiring that an appliance shall be *secure* when the appliance is not *required*.

Under the Act of 1893 *all* cars were involved under the terms of the statute. Under the act of 1910 only those cars *requiring* secure ladders and handholds are to be so equipped.

The Supreme Court of Iowa says "The statute required the handholds. * * * Congress made it a duty to provide secure handholds and ordered their use, and it was given to the Commission to fix later the standard."

The Act of 1910 under Section 2 makes the provision for all the equipment required by the act. If the above quotation correctly states the law all of the appliances provided for in that act must be placed upon cars before July 1st, 1911, that is, all cars must be equipped with—

Secure sill steps,
 Secure running boards,
 Efficient hand brakes,
 Secure ladders and
 Secure handholds on the top of all cars,

and in this connection the Iowa Court says: "It will be noticed that carriers were given more than a year in which to equip their cars with these secure handholds at the top of cars before the requirement became binding upon them."

We respectfully submit that if the carriers were required by Section 2 of the Act of 1910 to equip their cars with handholds by July 1st, 1911, *they were by virtue of the same Act and within the same time compelled to equip their cars with every appliance named in Section 2, namely: secure ladders, efficient handbrakes, secure running boards and sill steps.*

An examination of the Iowa decision can lead to but one inevitable conclusion, namely: that handholds upon the top of cars *are the only appliance to be placed upon the cars by July 1, 1911*, and this we submit cannot be the construction of that act.

Again the Iowa Court says—

"Therefore many of these cars must have been equipped to comply with this section at the time the act took effect. Later when the commission had acted and fixed the dimension and location of these handholds then it became the duty of the carriers to change their handholds to comply with the standard so fixed."

To confirm the construction given this act by the Iowa Court we must assume that Section 2 applied only to handholds upon the roofs of cars in use upon July 1st, 1911. If the car had ladders but no handholds upon the top of the cars at the time the law went into effect, such handholds must be placed before July 1st, 1911, and immediately thereafter change them to conform with

the order of the Interstate Commerce Commission, may we therefore enquire what can be found in this statute authorizing a construction of the act by which Railroad Companies will be required to temporarily put on or make secure handholds and afterwards *change the handholds to comply with the rule of the Interstate Commerce Commission*, when perhaps under the Commission's order they may not be required upon the car at all.

As stated in our original brief (Page 33), who is to determine what cars *require* such ladders, certainly not the railroad, and an examination of the entire act can lead but to one conclusion, namely: that the power to determine what cars *require* secure ladders and how many ladders should be placed upon the cars was a power that belonged to the Interstate Commerce Commission and until that is fixed and determined by the Interstate Commerce Commission there must necessarily be a hopeless confusion in the application of the appliance named in this act. It is true that there are cars which by nature of their general construction and use everyone would be of the opinion they *required* ladders, *but the power to determine this fact with certainty belonged exclusively to the Interstate Commerce Commission* and in the equipment of all cars by the carrier since the passage of this act the rule of the Interstate Commerce Commission as to what cars *required* ladders, the number of them the dimensions and where the same should be placed has been uniformly followed as outlined in the order of the commission, and only those cars which the Interstate Commerce Commission has designated as *requiring* ladders are cars that have been equipped with such ladders.

Under the order entered by the Commission upon March 13th, in 1911, it is provided:—

“Whereas, pursuant to the provisions of the act above stated (referring to act of 1910 and amendment 1911) the Interstate Commerce Commission by its order duly made and entered

October 10th, 1910, and March 13th, 1911, *has designated the number, dimension, location and manner of application of appliance provided for by Section 2 of the act aforesaid*" (Act of 1910) "*and whereas the matter of extending the period within which common carriers shall comply with the provisions of Section 2 (not Section 3) of the act first aforesaid, being under consideration, upon full hearing and for good cause shown*".

We therefore respectfully submit that it is clearly apparent that before the carrier could comply with the provisions of Section 2 in the Act of 1910 it was necessary for the Interstate Commerce Commission to determine and the carrier to understand—

1: What cars required secure ladders and hand-holds, running-boards, sill-steps, etc.

2: The number, dimensions and location of such appliances.

And in this connection may we further suggest that it should be noted with some interest that under the order entered by the commission and above referred to, that Section 4 of the Act of 1893 is expressly excluded from the extension of time granted. If, therefore, Section 2 then being under consideration by the Commission was not to be included in the extension of time why was it that the Commission did not clearly express it as it did in relation to Section 4 of the Act of 1893?

There is an intimation by the Iowa Court that the Commissioners were not given power to suspend the provisions of Section 2 of the Act of 1910 or the provisions of Section 4 of the Act of 1893.

We therefore respectfully submit that the opinion of the court in the *Cook case, Supra*, is not sustained by an examination of the Act of Congress, approved April 14, 1910.

In defendant in error's "Supplemental Reply Brief" we find the following:

"In addition to that case, we refer the Court to the case of *M. K. & T. R. R. Co. v. Barrister* (Ill.), 153 N. W. 763, where the Illinois Court has also recently held that the Act referred to went into effect as to Section 2, July 1st, 1911."

We are not aware of any case entitled *M. K. & T. R. R. Co. v. Barrister* having been decided by the Supreme Court of the State of Illinois and after a thorough search of the Illinois authorities we have been unable to find any case where the question involved in the case at bar has ever been submitted to the Illinois Courts. Counsel for defendant cite the above-mentioned case as being in the 155 *Northwestern* 763. The Illinois decisions are not contained in the *Northwestern Reporter*; they are in the *Northeastern Reporter*, and the 155 *Northwestern*, at 763 contains the case of *Coleman v. Illinois Central Railroad Company* set forth and commented upon for the first time in our original brief. The case to which counsel may possibly refer is the case of *M. K. & T. R. R. Co. v. Barrington*, 173 *Southwestern* at 595. This case, however, was not decided by the Supreme Court of Illinois but was disposed of in the Texas courts and in one of defendant in error's original briefs they have cited this case. We have not taken the occasion to comment upon it, as an examination of the case clearly discloses that the question involved in this suit is not discussed nor in any way considered, therefore, it is not pertinent to, nor has it any application to the case at bar.

In the case of *Kansas City Ry. Co. v. Leslie* (Ark.), 167 *Southwestern Reporter* 83, and action was brought under the *Federal Employers' Liability Act*, and was decided by the Supreme Court of that State in 1914. In the trial court the Railroad Company sought to show that under the rules of the Interstate Commerce

Commission it was not compelled to have handholds "upon the ends of cars until July 1st, 1916." The court held that the order was no defense in *that* action as it evidently involved the common law duty of the master to exercise "ordinary care to furnish its employees with reasonably safe appliances and to provide them with a safe place to work and that the Interstate Commerce Commission was without power to exempt the carrier from liability caused by its own negligence."

Here we submit, is a recognition of the power of the Commission to make the order of March 13th, 1911, and if the case at bar as in the Leslie case rested upon the breach of some common law duty as between Master and Servant, then of course, as before stated we have no place in this court, but with the fact appearing from the record and the repeated assurance by counsel for defendant in error that this action arises under the Act of 1910, we submit he has no right to recover in this case.

May we add that the case above mentioned, viz: *Kansas City Southern Ry. Co. v. Leslie, Supra*, came to this Court and is reported in 238 U. S. 599, where it was reversed June 21st, 1915, upon an instruction given by the trial court upon the measure of damages, and the question involved in this case does not appear to have been raised in the briefs, nor passed upon by this Court.

V

SPECIAL CLAIM OF RIGHT OR PRIVILEGE UNDER FEDERAL STATUTE

Counsel for defendant in error in a reply brief insist that an affirmance should be had in this case, because it is said that the plaintiffs in error did not in the Courts of Mississippi specially set up and claim a "right, privilege or immunity" under some Federal statute, commission to authority as required by Section 709 of the Federal Statute. So far as the application of this section is to be considered with the motions to dis-

miss or affirm herein we have stated our position in original brief (Pages 3 to 17 inc.) and upon the question of this Court's jurisdiction we have nothing further to add.

What we regard as a more serious question is, that it does not appear from the record in this case whether the car upon which defendant in error was injured was within the terms of the Supplemental Act of 1910 nor what kind or type of car it was. The evidence is somewhat uncertain upon this point, it clearly appearing that the only proof in the record is incidental to some other fact than sought to be proved. One witness spoke of it as "a freight car" and as "a box car" (Transcript 13). For the most therefore we may assume that it was designated as and proven to be, a "box car". There is no other evidence apparently in the record describing it in any way, nor is any evidence offered as to whether the commission designated this type of car as requiring a ladder, etc. Neither the defendant in error nor the plaintiffs in error proved nor offered to prove any order, rule, or finding by the Interstate Commission. In the briefs filed herein both parties have assumed that the various orders entered from time to time by the Commission are properly before this Court for examination in passing upon the question here involved.

In the trial court in Mississippi if either party desired to use the orders of the Interstate Commerce Commission (inasmuch as the courts do not take judicial cognizance of the orders of that Commission, *Robinson v. Baltimore & Ohio R. R. Co.*, 222 U. S. 506), they should have been introduced in evidence by the defendant in error if necessary to prove his case or by the plaintiffs in error if necessary to sustain some exception named in the act or to support some affirmative defense arising thereunder.

The burden of proof was upon the defendant in error to establish *certain facts* before he could claim any benefits under the Act of 1910. It was not sufficient to merely show that there was a defective grabiron upon

the roof of the car and that it caused his injury. It was quite necessary that he prove that he, the employer, and the car were within the terms of the act.

Let us therefore assume that the record is undisputed upon the following propositions:

1st. That upon March 15th, 1913, Defendant in Error was in the employ of Plaintiff in Error as switchman.

2d. That in the discharge of his duties he ascended a ladder upon the side of "a box car" and upon reaching the roof he seized a grabiron on the roof of the car, it gave way, and he fell and received his injuries, and further that the car was engaged in Interstate Commerce.

Please note again that Section 2 of the Act of 1910 does not provide that *all* cars shall be equipped with the ladders. No kind of a car is described other than "all cars *requiring* secure ladders * * * shall be equipped with such ladders, etc." "The designation of the cars "*requiring*" ladders with grabirons upon the roofs of cars over such ladders was solely for the Interstate Commerce Commission. It is quite certain that almost every one would agree that a "box car" probably requires a ladder, and that the Commission would probably so designate ladders for a "box car", but until the Commission has so actually determined that *all* box cars require a ladder, is there any presumption (certainly there is no proof) that the Commission did order that ladders be placed upon all box cars. A great many people might say that "drop end and gondola cars" and "tank cars with side platforms" and various other types of cars *required* such appliances, and a great many others don't know, *but no one can tell without consulting* the Commission's order and if it be disclosed that the Commission in fixing the "number" of ladders to be placed upon a car determined that no ladders were required and if the employee fell from a defective ladder, which in fact was placed upon the car before Con-

gress passed the law or afterwards at the whim of some master mechanic, *could the employee recover under the terms of the Act of 1910*, and is he not bound to resort to his remedy at common law?

If the Defendant in Error has failed to offer *any* evidence that the car from which he fell *was one requiring a secure ladder and grabiron*, has he brought himself within the provisions of this act? It is quite true that if he brings that car within the terms of the act the burden is perhaps upon the carrier to show that it did equip the car with the appliance required, but that question is not here involved.

It may be asked if the above be the rule, upon what theory we claim the benefit of an extension of the period over July 1st, 1911, when we have offered no evidence of the Commissioners' order of such extension. If the above rule prevails, there is no evidence that the "box car" required the appliances and his case fails without the necessity of *any* evidence by the defendant. It is a part of his case in chief. We are not claiming a defense under the order by the Commission in relation to a car being shopped for repair, nor under any proviso nor exception in the Act of 1910. The only exception or affirmative matter of defense we could plead is the extension of time named in the Commission's order, not the statute, and until the Defendant in Error has proven the car within the Act, no proof of an extension is necessary.

In *Terre Haute etc. RR. Co. v. McCorkle*, 140 Ind. 613, it was held "that where two or more facts are necessary to make out a cause of action they must both be proven." Cited with approval in *Modern Woodmen of America v. Kincheloe*, 93 N. E. 452.

In *Indianapolis & G. T. Co. v. Foreman*, 69 N. E. P. 669, there was an action brought against the Traction Company and a construction Company to recover for personal injuries alleged to have been caused by the negligence of the corporation. In part, the cause of action was founded upon the Indiana Statute pro-

viding that a railroad shall be liable for damages, etc., suffered by any employe while in its service, while such employe was in the exercise of due care and diligence and, second, that where such injury resulted from the negligence of such corporation to whose order or direction the injured employe at the time of the injury was bound to conform and did conform. The question arose in that case as to whom the burden of proof was on in relation to these more or less negative requirements, and the court held: "It is a well settled rule that when a party seeks the benefit of a statute he must by averment and proof bring himself within its provisions," quoting and citing the case of the *American Rolling Mill Company v. Hollinger*, 69 N. E. 460, which last mentioned case was brought under what is designated in the decision as "The Employers' Liability Act", and holding "that the general rule is that if a person seeks to maintain an action under a statute he must state specially every fact requisite to enable the court to judge whether he has a cause of action under the statute," citing a number of cases, including the leading case of *Spiers v. Parkers*, 1 Durn & East., 141, which was an action to recover a penalty provided for by the statute. The plaintiff in his declaration negatived an exception found in the Act providing for the penalty pursuing the words of the exception and it was there held in that case that inasmuch as he had failed to bring himself within the exception, his declaration was bad, even after a verdict.

In *New Bedford v. Higden*, in the 117 Mass., P. 445, the Court held that "in every action to enforce a statutory liability the burden is upon the plaintiff to prove all the facts which by the statutory provisions are necessary to create the liability."

IN CONCLUSION

For five years the Commission and the carrier have endeavored under a perfectly well understood plan to bring to a successful conclusion the requirements of the

Supplemental Safety Appliance Act of 1910. Never until 1914 was there the slightest contention in any case in any court that the carrier was not to be given five years from July 1st, 1911, to provide for its cars the equipment mentioned in Section Two of that Act. That such a construction of the statute should obtain we say is reading into the Safety Appliance Act, a meaning not consistent with the wording of the law or the spirit of the authority creating it; and certainly not in harmony with the theory upon which both the Commission and Carriers have worked.

Respectfully submitted,

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No. **637**

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**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1916

**ILLINOIS CENTRAL RAILROAD COMPANY and
YAZOO & MISSISSIPPI VALLEY RAILROAD
COMPANY**

Plaintiffs in Error

vs.

GEORGE R. WILLIAMS, Defendant in Error

**In Error to the Supreme Court of the State of
Mississippi**

**MOTIONS TO DISMISS OR AFFIRM,
BRIEF AND ARGUMENT FOR
PLAINTIFFS IN ERROR**

CHARLES C. LEFORGEE

Attorney for Plaintiff in Error

**MR. BLEWETT LEE,
MR. CHARLES N. BURCH,
MR. ROBERT B. MAYS,
of Counsel.**

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1916

No.

**ILLINOIS CENTRAL RAILROAD COMPANY and
YAZOO & MISSISSIPPI VALLEY RAILROAD
COMPANY**

Plaintiffs in Error

vs.

GEORGE R. WILLIAMS, Defendant in Error

STATEMENT

George R. Williams, the Defendant in Error, recovered a judgment for fifteen thousand dollars against the Plaintiffs in Error in a State Court in the State of Mississippi. From this judgment, Plaintiffs in Error took an appeal to the Supreme Court of Mississippi where the judgment was, upon June 26, 1916, affirmed without a written opinion.

A petition for a writ of error was by Plaintiffs in Error presented to the Chief Justice of the Supreme Court of that state upon July 22, 1916. The prayer of the petition was granted with *supersedeas*.

Motions are now pending in this court for dismissal of the writ or to affirm the judgment of the Supreme Court of Mississippi.

So far as material to the issue presented under these motions the facts in relation to the accident are not disputed, and briefly they may be stated as follows:

Upon and prior to March 15th, 1913 (date of Defendant in Error's injury), Plaintiffs in Error were Interstate carriers operating numerous cars in switch yards at Memphis, Tennessee, where Defendant in Error was employed as one of a switching crew. While in the discharge of his duties in the above mentioned yard for Plaintiffs in Error, he ascended the ladder of a car engaged in Interstate Commerce, and upon reaching a point near the top of the ladder took hold of the grabiron or handhold upon the roof of the car, which proved to be insecurely fastened and gave way, whereupon Defendant in Error fell, receiving injuries.

The Defendant in Error based his right of recovery solely upon the provisions of the Supplemental Safety Appliance Act approved April 14, 1910. No claim has been by him made of any right to recover because of the alleged breach of any common law duty between master and servant. In the briefs filed herein by counsel for defendant, any common law right to recover in this case is expressly disclaimed, and the right to recover seems based solely upon the above mentioned act of Congress.

As we have hereinafter set out the trial courts instructions to the jury, we avoid repetition by directing your honors attention to page 7 of this brief, where they are recited at length. It was and now is the contention of Plaintiffs in Error that the instructions given at the instance of Defendant in Error were incorrect and do not fairly construe the Supplemental Safety Appliance Act of 1910 in that such instructions expressly deny the valid order of a Federal authority, viz:—the Interstate Commerce Commission. We contend that a fair construction of this act clearly discloses that under the admitted facts in this case Defendant in Error has no right of action under the Supplemental Safety Appliance Act of 1910.

Contesting this construction of the act, Plaintiffs in Error sought a new trial in the trial court, which was denied.

Upon appeal to the Supreme Court of Mississippi the Plaintiffs in Error urged a reversal of the judgment for the giving of the instructions which were equivalent to a directed verdict for Defendant in Error, and could not be warranted by the terms of the Federal act which the instructions attempted to define. The judgment of the trial court was affirmed. To review this action by the Court of last resort in Mississippi this writ was prosecuted.

I

THE MOTION TO DISMISS OR AFFIRM

The question now submitted to this court arises upon a motion herein filed by the Defendant in Error for the dismissal of the writ of error, or in the event that motion be overruled, then for reasons in the motion assigned, it is asked that the judgment of the State Court from which this case came, be affirmed.

The motions so made by the Defendant in Error, as above noted, will be found to be in the form usually employed under the practice of this court in submitting this question for decision; they assign as the reasons for the relief prayed:

First—That the Federal questions presented to this court by Plaintiffs in Error prosecuting this writ are wholly formal 'and are so absolutely devoid of merit as to be frivolous,' and that the said questions presented have been "so explicitly foreclosed by the decisions of this court as to leave no room for real controversy."

Second—"If the writ of error shall not be dismissed for want of jurisdiction," then it is asked that the judgment of the Supreme Court of Mississippi be affirmed because "it is manifest that said writ of error was taken for delay only;"

"That the questions on which the decision of the case here depend are so frivolous as not to need further argument."

The words employed in this motion, follow a form, and are only pertinent at the present time as defining the issues now to be decided, which we submit are quite beside the scope of the argument of counsel for Defendant in Error. We respectfully submit that a reading of the briefs filed by Defendant in Error are not only persuasive, but quite conclusive that counsel misapprehend the purpose of the motions made herein. It is most apparent from argument filed by counsel for Defendant in Error that there is now presented to this court, as we believe for the first time, a serious Federal question which both the carrier and employe engaged in Interstate Commerce are entitled to have *decided upon the merits* as fixing their several rights under the Federal Safety Appliance Act and as defining the effect of an order by the Interstate Commerce Commission in relation to such act.

We will assume for the purpose of these motions that the statement of facts recited in the brief filed herein for Defendant in Error is correct and which without detailed reiteration disclose the following in so far as they are now material:

The Plaintiffs in Error are railroad companies and common carriers.

The Defendant in Error was an employe of one of these railroad companies.

The Defendant in Error upon the *15th day of March, 1913*, attempted to ascend the side of a car, and as he climbed a ladder upon the side of the car, he reached for the handhold or grabiron upon the top of the car, which, being insecurely fastened, gave way, whereupon Defendant in Error fell to the ground, receiving injuries.

The Defendant in Error instituted a suit against the railroad companies in a state court in the State of Mississippi to recover damages for the injuries so received.

There was and is no claim in the Defendant in Error's declaration or complaint that his suit was based upon any common law breach of duty as between master and servant.

There was and is no claim that damages should be allowed under the terms of the Federal Employers' Liability Act. The sole and only question involved in this case is the claim that the Plaintiffs in Error were liable under the terms of the Supplemental Safety Appliance Act of 1910. That was and now is the sole and only question to be considered *upon the merits* of this case.

That counsel for Defendant in Error so regard the ground of recovery we direct attention to page 9 of the brief filed by Mr. Harrington wherein the following statement occurs:

"Accordingly Congress passed the act approved April 14th, 1910, *which is the act under which this action was prosecuted to a judgment.* Although the liability of the company is undisputed *even if we were tested by the Act of 1893.*" (Italics ours.)

The Defendant in Error procured a judgment for fifteen thousand dollars in the trial court.

Upon appeal to the Supreme Court of Mississippi the judgment was affirmed without any opinion.

A petition for a writ of error presented to the Chief Justice of the Supreme Court of Mississippi by the railroad companies recites among other things the following:

"Your petitioners claim the right to remove said judgment to the Supreme Court of the United States by writ of error under Section 237 of the Judiciary Act, Statutes at Large of the United States, Vol. 36, p. 1156, because the said case arose under, and there was brought in question in said case the true construction of an Act of Congress commonly called the Federal Safety Appliance Act, approved April 14th, 1910, and

Acts amendatory thereto. And the Supreme Court of Mississippi denied petitioners, as we respectfully submit, the rights, privileges and immunities under said Acts of Congress in this; that it failed and declined to hold that it was error prejudicial to the petitioner railroad companies, for the trial court to give in charge to the jury, as was done, instructions on the trial of the case, instructing the jury that under Section 2 of the Act of Congress, approved April 14th, 1910, it became and was the duty of the defendant companies, on the 15th day of March, 1913, to equip and have equipped their cars which they were using on their railroads, with proper handholds, and it was the express duty of the defendants, as to all cars having ladders upon them, to have secure handholds or grabirons on the roofs, at the top of such ladders, and a failure to have secure handholds on the roofs, at the top of such ladders, was a violation of the Act of Congress, which made the defendant companies liable in damages to any employee who was injured in consequence of the violation of this law, and who at the time of such injury was engaged in the line of duty to defendant; and to instruct the jury that if they believed, from the evidence that George R. Williams, Plaintiff, in the line of his duty, went upon the car in question, in the yards of defendants, being used by them, and that by reason of a defective handhold at the top of said car, he fell and was injured, they would return a verdict in favor of the plaintiff. And to further instruct the jury that it is provided by Section 4 of the Act of April 14th, 1910, as applied to these defendant companies, that if they move or haul, or handle with commercial cars, any car which has a ladder thereon, and which has no secure handholds on the roof at the top of such ladders,

that such car is then used at the sole risk of the companies, and they are made absolutely liable in damages to any employe who is injured in the line of duty by reason of their failure to have a secure handhold; and that they are, therefore, instructed that in such case, the employe does not assume the risk of injury, but the risk is carried by the company. And to further instruct the jury for the plaintiff that it was the absolute duty of the defendants to have and maintain a safe handhold at the top of the car in question at the time in question, to-wit, 15th day of March, 1913, and a failure so to do was negligence on the part of said companies, as a matter of law."

Upon July 22nd, 1916, the Chief Justice of that court ordered the issuance of the writ of error with superse-deas.

Under the assignment of errors by Plaintiff in Error appears the following:

"First. The Supreme Court of Mississippi erred in deciding and holding that it was not error on the part of the court of original jurisdiction to give in charge to the jury the following instructions, viz: "

"Instruction No. 1. The Court instructs the jury for and on behalf of the plaintiff as follows: That under Section 2, of the Act of Congress, approved April 14th, 1910, it became and was the duty of the defendant companies, on the 15th day of March, 1913, to equip their cars which they were using on their railroads with proper handholds, and it was the express duty of the defendants, as to all cars having ladders upon them, to have secure handholds or grabirons on the roofs, at the top of such ladders, and a failure to have secure handholds on the roofs, at the top of such ladders, was a violation of the Act of Congress which made the defendant companies liable in damages to any employe who was injured in consequence of the violation of this law, and who at the time of such injury was engaged in the line of duty to

defendant. Now, therefore, if you believe from the evidence in this case that George R. Williams, plaintiff, in the line of his duty, went upon the car in question, in the yards of the defendant, being used by them, and that by reason of a defective handhold at the top of said car, he fell and was injured, you will return a verdict in favor of the plaintiff."

"And it so erred because the Act of Congress referred to did not require the equipment of the cars with handholds and grabirons on the roof, as the instruction directed, for the reason that the Act of Congress referred to requiring this was not in force on the 15th day of March, as stated in the instruction."

"Second. The Supreme Court of Mississippi further erred in deciding that it was not error on the part of the Court of original jurisdiction to give in charge to the jury the following instruction, viz:"

"'Instruction No. 2. The Court further instructs the jury for and on behalf of the plaintiff as follows: That it is provided by Section 4 of the Act of April 14, 1910, and as applied to these defendant companies, that if they move or haul, or handle with commercial cars, any car which has a ladder thereon, and which has not secure handholds on the roof at the top of such ladders, that such car is then used at the sole risk of the companies, and they are made absolutely liable in damages to any employe who is injured in the line of duty by reason of their failure to have a secure handhold; and you are therefore, instructed that in such cases, the employe does not assume the risk of injury, but the risk is carried by the company.'"

"Third. The Supreme Court of Mississippi further erred in deciding that it was not error on the part of the court of original jurisdiction to give in charge to the jury the following instruction, viz:"

"'Instruction No. 4. The Court instructs the jury for the plaintiff that it was the absolute duty of the defendants to have and maintain a safe handhold at the top of the car in question, and a failure so to do was

negligence on the part of said companies, as a matter of law.' ”

“In all of the particulars above stated the Supreme Court of Mississippi denied to plaintiffs in error their rights under said Acts of Congress and under the Constitution and laws of the United States.”

It will here be noted that the very question now upon the merits submitted to this court, was submitted to the trial court and was the chief reason assigned for reversal in the Supreme Court of Mississippi.

Upon the motion to dismiss this writ of error about 47 pages are consumed in one brief and something like 30 in the other to which we respectfully refer as the best evidence that counsel for Defendant in Error at least have not labored under any belief that the questions here involved are “frivolous” or settled by any decision of this court, as their entire argument purports to argue the *merits* of a serious and debatable Federal question rather than to disclose wherein this court is without jurisdiction or that the reasons assigned for suing out this writ are frivolous.

We assume that this motion is based under Section 709, of the judiciary act, which for convenience we set forth. It is as follows: “Section 709. (Judgments and decrees of state courts on writ of error.) A final judgment or decree in any suit in the highest court of a state, in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the Constitution, Treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed, by

either party, under such Constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States.

The Supreme Court may reverse, modify, or affirm the judgment or decree of such state court, and may, at their discretion, award execution, or remand the same to the court from which it was removed by the writ. (R. S.)"

Congress in its first session made provision for the review of judgments of state courts in the Supreme Court of the United States (Para. 25 of the Judiciary Act, September 24, 1789) and the provisions of this act except for certain changes not necessary here to be noticed are substantially those enacted at a later date and now before this court for the consideration in this motion.

So frequently has the construction of this statute been before this court that the rights of the parties litigant are thoroughly established.

It is intimated by Defendant in Error that no Federal question was preserved before the Supreme Court of Mississippi or the trial court in the State of Mississippi, and that therefore no question can now be raised nor will jurisdiction be accepted by this court.

In the above mentioned Section 709, there are three classes of cases in which the judgment of the state court may be re-examined by the Supreme Court of the United States.

1st: Where is drawn in question the validity of a treaty or statute of or authority exercised under the United States and the decision is against their validity.

2nd: Where is drawn in question the validity of a statute of or an authority exercised under any state on the ground of it being repugnant to the constitution, treaties or laws of the United States and the decision is in favor of their validity.

3rd: Or where any *title, right, privilege or immunity is claimed* under the constitution or any treaty or statute or commission held or authority held or exercised under the United States and the decision is against the title, right, privilege or immunity *specially set up and claimed by either party under such constitution, statute, commission or authority.* *Home Insurance Co. v. Augusta*, 93 U. S. 116.

It will be observed that under the third class the *privilege, right or immunity* must be specifically set up or claimed to give this court jurisdiction. But where the validity of a treaty or the statute of the United States is raised or an authority exercised under the United States is drawn in question and the decision by the state court is against their validity, under a number of decisions by this court it has been decided that if the Federal question appears in the record and was decided or such decision was necessarily involved in the case and the case could not have been determined without holding such question, the fact that it was not specially set up and claimed is not conclusive against the review of such a question in this court.

Kaukauna Water Power Co. v. Green Bay & M. Canal Co., 142 U. S. 254.

Columbia Water Power Co. v. Columbia Electric Street R. & L. T. Co., 168 U. S. 475.

An examination of the briefs filed in this case clearly disclose that the question involved is not a privilege, title, right or immunity claimed by the Plaintiffs in Error under the terms of any treaty or statute of the United States in operation at the time of the accident, but it is now insisted by Plaintiffs in Error that at the time of the accident there was no statute in force and effect requiring the appliances claimed by Defendant in Error to have caused his injury. In other words, it is not a question of Plaintiffs in Error claiming *an immunity*, under some Federal statute, but is the claim that *Defendant in Error did not have a cause of action under the Safety Appli-*

ance Act of 1910. That this is the clear wording of that act, under which the Interstate Commerce Commission extended the time within which certain appliances were to be supplied. That if the Act of 1910, was not in effect, there was no right, privilege or immunity to be claimed under it.

It might with some propriety be stated that while the position of counsel for Defendant in Error is without merit, if it be conceded that the Plaintiffs in Error are relying upon some "right, privilege or immunity" under the third classification of the statute above quoted they have a right to have this cause heard in this court.

In the case of *St. Louis, Iron Mountain and Southern Railway Co. v. Taylor*, 210 U. S. 281, a motion was made to dismiss the writ of error to review a judgment of the Supreme Court of Arkansas. The case involved a claim for damages under the Safety Appliance Act and it was evidently insisted that the Plaintiff in Error, in the state court, had not set up or claimed a right, privilege or immunity under any Federal Act. In an opinion by Mr. Justice Moody at page 293, the following is stated:

"The words of that section (709), material here, are those authorizing this court to re-examine the judgments of the state courts where any title, right, privilege or immunity is claimed under * * * any * * * statute of * * * the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed * * * under such 'statute.' There can be no doubt that the claim made here was specifically set up, claimed and denied in the state courts. The question therefore, precisely stated, is whether it was a claim of a right or immunity under a Statute of the United States. Recent decisions of this court remove all doubt from the answer to this question." (Citing *McCormick v. Market National Bank* 165 U. S. 538, and a number of other cases.) "The principles to be derived from these cases are these: *Where a party to litigation in a state court insists, by way of objection to or requests for instructions, upon a construction of a statute of the United States which will lead, or, on possible*

findings of fact from the evidence may lead to a judgment in his favor and his claim being duly set up, is denied by the highest court of the state, then the question thus raised may be reviewed in this court. The plain reason is that, in all such cases, he has claimed a right or immunity under a law of the United States and it has been denied to him. Jurisdiction so clearly warranted by the constitution and so explicitly conferred by the act of Congress needs no justification. But it may not be out of place to say that in no other manner can a uniform construction of the statute laws of the United States be secured so that they shall have the same meaning and effect in all the States of the Union." (Italics ours.)

It will be noted that in the above case the complaint or declaration charged a violation of the Federal Safety Appliance Act in that it failed to equip certain of its cars with draw bars as required by that Act. "The defendant's answer denied that the cars were improperly equipped with draw bars and alleged that Taylor's death was the result of his own negligence" (Page 284), a mere general denial. So far as we can learn from reading of the case, there was by the defendant no special plea or claim in the pleadings of any right, title, privilege or immunity under any Federal Statute. His answer was merely not guilty and contributory negligence by the deceased.

A very brief examination of the record in this case discloses that over the objection of the Plaintiffs in Error the instructions given by the trial Judge at the instance of the Defendant in Error was a direct denial of the Plaintiffs in Error rights under the act of 1910. The giving of these instructions was assigned as a ground for new trial which was denied. The case was taken to the Supreme Court of Mississippi, where the chief ground of reversal there urged was the erroneous instructions given by the trial court construing the Act of 1910. The judgment of the lower court was there affirmed, without an opinion. The petition for a writ of error presented to the Chief Justice of the Supreme

Court of Mississippi set out in detail the very question of the trial court's error in instructing the jury as to the meaning of the Act of Congress passed in 1910. The assignment of error in this court presents no other question. We therefore insist that while the question of this court's jurisdiction does not arise under the last above mentioned clause of Section 709 of the Judiciary Act, if for any reason it should be so held, Plaintiffs in Error are within their rights in asking this court to review the action of the Supreme Court of Mississippi in affirming the judgment of the trial court in that state.

We may further suggest that under the Mississippi practice when instructions are marked "given" or "refused" they shall be taken as excepted to. *Watson v. Dickens*, 12 S. and M. (Miss.) 608. Since 1850 the practice in that state has conformed with this decision, and further under Chapter 111 of the Act of 1910, Mississippi Statutes, it is provided that a bill of exception is not necessary to review the action of the court in passing upon instructions. They are a part of the record without a bill of exceptions.

As to the claim that the question here involved has been decided by this court, and is therefore not open for further discussion, while we have at some length herein-after answered this claim, we desire to state in connection with this branch of our argument that we know of no case in which the precise question involved in this case has been before this court, and we respectfully submit it is clearly evident from the very statement of the proposition now submitted under the briefs in this case by Defendant in Error, that it is purely and exclusively a Federal question involving the construction of the Supplemental Safety Appliance Act of 1910, and the effect of an order made by the Interstate Commerce Commission.

In the case of *Louisville & Nashville Railroad Co. v. Melton*, 218 U. S. 44 (cited by Defendant in Error), suit was instituted by Melton in a state court of Kentucky. The plaintiff recovered a judgment which was affirmed by the court of last resort in that state, whereupon a writ

of error was prosecuted to this court. Motions were made therein to dismiss the writ or affirm the judgment and under an opinion rendered by Mr. Justice White the following was stated:

"We primarily dispose of a motion to dismiss, which is rested upon the ground that the Federal question relied upon has been so conclusively foreclosed by prior decisions of this court as to cause it to be frivolous, and therefore not adequate to confer jurisdiction. The contention may not prevail, even although it be admitted that a careful analysis of the previous cases will manifest that they are decisive of this. We say this because, for the purpose of the motion to dismiss, the issue is not whether the Federal question relied upon will be found, upon an examination of the merits, to be unsound, but whether it is apparent that such question has been so explicitly foreclosed as to leave no room for contention on the subject, and hence cause the question to be frivolous. That this is not the case here we think results from the following considerations: (a) because analysis and expounding are necessary in order to make clear the decisive effect of the prior decisions upon the issue here presented; (b) because the division in opinion of the lower court as to whether the statute as construed was repugnant to the equal protection clause of the 14th Amendment suggests that the controversy on the subject here presented should not be treated as of such a frivolous character as not to afford ground for jurisdiction to review the action of the court below; and (c) because, while an examination of the opinions of the state courts of last resort will show that there is unanimity as to the power, consistently with the equal protection of the law clause, to classify railroad employees actually engaged in the hazardous work of moving trains, such examination will also disclose that there is some conflict of view as to whether a statute on that subject as broad as is the statute under review, as construed below, is consistent with the clause, thus additionally serving to point to the necessity of analyzing and considering the subject

anew instead of treating it as being so obviously foreclosed as not to permit an examination of the subject."

In the case at bar we are not aware of a single decision by this court upon the proposition involved herein, and counsel for defendant have cited none. Aside from a consideration of the question alone, the Chief Justice of the Supreme Court of Mississippi, upon the petition clearly defining the very question now submitted directed this case be sent to this tribunal for examination, and this after the Supreme Court of that state had decided the case *without any opinion*.

The decisions hereinafter discussed of three or four inferior courts do not agree upon this question, and we therefore submit the record does disclose that over the objection of Plaintiffs in Error the trial court positively and distinctly instructed the jury upon the Federal Act, involved, in such a manner that it is a distinct, direct holding against the perfectly clear meaning of the Safety Appliance Act of 1910, and a direct refusal by the courts of Mississippi to recognize and enforce a valid rule made by the Federal authority, viz:—The Interstate Commerce Commission. (See pages 61 to 63 Defendant in Error's brief and Plaintiffs in Error's motion for new trial, page 72—Defendant in Error's brief.) That the question here submitted is inherently Federal and is not in fact presented under the third classification above mentioned, but involves the very serious question of a state court so construing a Federal Statute that, it is meaningless, and the State Court's holding must be taken as a refusal to enforce a clear rule announced by a Federal authority, viz:—The Interstate Commerce Commission. If we are correct in our position then we submit that quite independent of any claim set up by the Plaintiffs in Error upon either of these questions before the State Courts, the Defendant in Error's motions should be denied. *Equitable Life Assurance Co. v. Brown*, 187 U. S. 310.

We quite concede that in any case, however thoroughly the mere jurisdiction may be established, if it appear that the issue presented is frivolous, the writ

may be dismissed, and it is the duty of the court to dismiss the writ. As to whether the question here presented is frivolous, a makeshift, a pretense to secure delay, we will at some length hereinafter discuss, but upon this motion to dismiss or affirm we suggest that this court is asked by opposing counsel to consider the merits of a serious question upon the mere assertion that it is frivolous. It has been held by this court that on error from a State Court to this court where the Federal question asserted to be contained in the record "*is manifestly lacking all color of merit*" (*Swafford v. Templeton*, 185 U. S. 488), the writ of error should be dismissed. We do not understand that the rule has ever been so extended by any decision of this court, as brief for Defendant in Error intimates, and that a motion to dismiss may at the election of a Defendant in Error be seized upon as the place to have decided the merits of a bona fide Federal question. The real issue therefore now to be decided is really whether the question now presented in the record of this case is so "*manifestly lacking all color of merit*" that it is unworthy the serious attention of this court rather than give it that deliberation which the statute above quoted indicates as necessary to decide a cause upon the merits.

Federal legislation upon Interstate Commerce has coined many problems for this court to solve. In the main they involve questions about which the master and servant do not agree. Indirectly it is perhaps the question "*as old as the hills*," viz:—each insisting upon a construction of these Federal acts that will the least disturb what they evidently regard as their natural rights. Now and then, as in all classes of litigation, unwarranted and vexatious appeals are taken, but an examination of the decisions by this court can only lead one to the inevitable conclusion, that this tribunal has never hesitated to consider upon the merits any question seriously involving the construction of the acts affecting Interstate Commerce. We therefore respectfully submit that this motion to dismiss for want of jurisdiction in this court is without good cause and should be overruled.

II

IS THE PROPOSITION NOW SUBMITTED FRIVOLOUS?

In discussing this question we wish to again direct attention to these facts in this case, viz: that the Defendant in Error at the time he received his injuries was not engaged in coupling or uncoupling cars, nor was he using a grabiron or handhold placed upon cars, as required by the terms of any safety appliance act or amendment thereto passed prior to April 14, 1910; that the Defendant in Error was climbing a ladder upon the side of a car and upon taking hold of the handhold or the grabiron upon the roof of the car, the same gave way and he fell to the ground.

Defendant in Error, as before stated, does not seek to recover upon any common law theory of negligence growing out of the relationship of master and servant, nor is there any pretense or claim that this action is brought under or supported by any of the provisions of the Federal Employers' Liability Act. Upon the contrary, counsel for Defendant in Error expressly disclaim any right to recover under the common law and the Federal Employers' Liability Act, expressly affirming that the Defendant in Error's right to recover exists solely under the Supplemental Safety Appliance Act of 1910. This being the Defendant in Error's claim we feel that we are quite at liberty to confine our remarks to this single issue as submitted by counsel for Defendant in Error. It is quite evident therefore that the questions now to be determined are: (a) What construction shall be given the Supplemental Safety Appliance Act of 1910; (b) Has the Interstate Commerce Commission by any valid order extended the time for the carriers' compliance with the statute passed in 1910; and, (c) Has the question now here presented for consideration been so decided by this court that the question here involved is settled and determined.

These questions we submit in the order above named.

A: WHAT CONSTRUCTION SHALL BE GIVEN THE SUPPLEMENTAL ACT OF 1910?

It is the contention of counsel for the Defendant in Error that the Plaintiffs in Error as interstate carriers and employers became and were bound under any circumstances at all times after July 1st, 1911, to have, keep and maintain upon all cars safe handholds upon the roof of all cars upon which ladders were in use, and a failure so to do, resulting in injuries to an employee, rendered the carrier liable, solely because of and under the provisions of the Supplemental Safety Appliance Act of 1910.

It might be well in this connection to note that the Supplemental Safety Appliance Act of 1910 did not destroy the servant's right of action for the breach of a common law duty existing before and at the time this law went into effect, nor did it in any way abridge or destroy any right of action arising under the Federal Employers' Liability Act. The purpose of the Supplemental Act of 1909 was not to destroy existing remedies for any injuries for which a right of action existed prior to that time. We submit its purpose was to compel the railroads to furnish certain equipment for their cars and locomotives, the absence of which did not necessarily constitute an act of common law negligence by the company. It does not therefore follow that the intimations by counsel for Defendant in Error, that railroad employees injured upon defective ladders or defective handholds upon the roofs or at other places upon cars were without relief and remedy where such ladder or handhold or equipment there placed before 1910 without any order of law, was defective. It is intimated by opposing counsel that the object of the Supplemental Act of 1910, as controlled by Section 3, was to grant to the Interstate Commerce Commission power to see to the *standardization* of equipment, rather than to compel carriers to equip their cars with the appliances named in Section 2. That the legislation was designed to enforce *standardization* and the appliances named in Section 2 are evi-

dently to be regarded as incidental. Counsel for Defendant in Error argue with some emphasis that there is no distinction between "grabirons" upon various parts of a car. It is claimed that the "grabiron" or "handhold" under the original act in 1893 and a "grabiron" or "handhold" at any place other than designated in the act of 1893 are all within the provisions of the original act of 1893. In this connection we beg to differ with counsel, as it will be noted that under the act of 1893 the wording is most significant in that it specifically provides under Section 4, "it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with grabirons or handholds *in the ends and sides of each car for greater security to men in coupling and uncoupling cars.*"

It will be noted that under the Supplemental Act of 1910 for the first time appears the following: "All cars requiring secure ladders * * * shall be equipped with such ladders * * * and all cars having ladders shall be so equipped with secure handholds or grab irons on their roofs at the top of such ladders." We are not aware of any case in which this court has been called upon to construe the meaning of the above phrase quoted from the act of 1893, but in the case of *Pennell v. Philadelphia & R. R. Co.*, 231 U. S. Page 675, (a case again hereinafter referred to) this court had occasion to construe the Safety Appliance Act in relation to automatic couplers. In that case it was contended that under the Federal Act automatic couplers were required between the tender and locomotive, this court said (680):

"It is of special significance, therefore that in its (The Interstate Commerce Commission) order, under the act of April 14th, 1910 (86 Stat. at L. 298, Chapt. 160 U. S. compiled Stat. Supp. 1911, p. 1327) which was supplemental to the other acts, designating the number, dimensions, locations and manner of application of certain appliances, it provided as follows: 'Couplers:—Locomotives shall be equipped with automatic

couplers at rear of tender and front of locomotives.' *That is couplers were required where danger might be incurred by employees.*" (Italics ours.) Clearly indicating that words used in the act or in an order by the Commission defining the place upon the car where the appliances *must* be placed, control, as defining the only appliances required by the act.

In the case of *United States v. Boston & Maine Railroad Co.*, 168 Fed. 48, the court held that a man connecting or disconnecting air hose between the cars is engaged in coupling or uncoupling cars and charged the jury that Section 4 of the act of 1893 requires secure grab irons or handholds at those points in the end of each car where they are necessary in order to afford greater security to men coupling and uncoupling cars.

In *Dawson v. Chicago, R. I. & P. Ry. Co.*, 114 Fed. at 870, the court said that the purpose of requiring grab irons or handholds to be placed at the end of cars in interstate commerce seems to have been to afford greater security for employees when they are in the act of coupling or uncoupling cars. See also *Campbell v. Spokane & I. E. R. Co.*, 188 Fed. 516.

It will be noted that the only reference made in Section 4 of the act of 1893 for grab irons or handholds is in the ends and sides of cars *for greater security to men in coupling and uncoupling cars*. So expressed to fix with certainty the location of the only grab irons provided for in the act, to decrease danger to men who were coupling and uncoupling cars. We do not wish to be understood as saying that if an employee engaged in some duty other than coupling or uncoupling cars, took hold of the grab iron or handhold in the end or side of a car and through a defect in such appliance he was hurt that he could not recover under the provisions of that act,—we insist, however, that it is quite clear, the only requirement for placing the grab iron at any place upon any car under the act of 1893, was in the sides and ends of cars so adjusted as to afford greater security to men in coup-

ling and uncoupling cars and that at no other point or points upon the cars were grab irons or handholds required, and if a grab iron or handhold was placed upon a car at some other place, and if through a defective condition an employee was hurt his right of action would be under a possible common law obligation, certainly not under the Safety Appliance Act of 1893.

It is only by virtue of the act of 1910 that any provision was ever made for the construction of grab irons or handholds upon the roof of a car at the top of the ladder, and if a liability exists because or on account of a defective grab iron or handhold in the roof of the car it must necessarily be under and by virtue of the Supplemental Act of 1910.

May we again direct attention to the Safety Appliance Act of 1893. Among the material things required of interstate carriers by this act was to equip cars, first with automatic couplers; second, continuous brakes; third, driving wheel brakes for the locomotives; fourth, grab irons or handholds in the ends and sides of cars to afford greater security to men in coupling and uncoupling cars. This act was approved March 2, 1893, and under its terms the act fixed the time for compliances as to driving wheel brakes for locomotives and a train brake system at January 1st, 1898. The same date was fixed for the law becoming effective as to automatic couplers.

Section 4 of the act provides in express terms that from and after July 1st, 1895, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful to use a car that is not provided with grab irons in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

Section 7 provides that the Interstate Commerce Commission may from time to time upon full hearing, and for good cause, extend the period within which any common carrier shall comply with the provisions of this act.

A time was fixed by the act designating a period for a compliance with the act. It is also clearly evident

that Congress knew the tremendous task imposed upon the carrier. It also knew that there was an authority perhaps better qualified to do justice to the carrier and to the public generally than Congress. What Congress intended to and did do was to pass a law requiring this equipment, and expressly gave power to the Interstate Commerce Commission to designate and fix a period within which the equipment should be upon the cars, and this as the commission in its wisdom would deem to be the best interests of all concerned. It was for the commission to work out the solution of this problem, which involved the welfare of the public generally, the interstate carrier, and the employee. It was for the Commission to determine the ability of the carrier to do the work without obstructing the commerce of the country. It was for the Commission to design and specify the dimension and location of the appliances. By this initial legislation sprung into existence a power hitherto unknown in our form of Government. It was the instrumentality through which Congress intended that a great movement should become a living, vital thing. Its power was supreme, and the wisdom of the Act of 1893 has become more manifest year after year, and the subsequent amendments to that act, have never limited, but have always tended to broaden the power and authority of that commission. In the very first instance Congress gave the Commission absolute power to fix the time within which such law should become effective. This was the spirit of the scheme as it was crystalized in that law, and we are aware of no case where the power of the Interstate Commerce Commission in this particular has been denied.

There was an amendment to this act in 1903, in which Congress again recognized the supreme power of the Interstate Commerce Commission to control the proposition of railroad equipment by designating it as the proper body to increase or decrease the minimum percentage of cars in any train required to be operated with power or train brakes;—Congress clearly recognizing the commission as a board of commerce, legally con-

stituted by law, the right arm of Congress, with full and complete power to enforce the provisions of the various Federal Acts as and in the manner it deemed best.

In 1910 the act was passed under which the present controversy arises. It will be noted that this act is not an independent act. That is, an act disconnected from all other legislation upon like questions. It constitutes a part of the continuous legislation upon safety appliances to be used by interstate carriers. Congress designated this act of 1910 as "An Act to supplement an act to promote," etc. (Designating the act of 1893 and the amendments thereto.)

For convenience and reference we set this Supplemental act out in full. It is as follows:

LADDERS, HAND BRAKES, HAND HOLDS

An act to supplement "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes and for other purposes," and other safety appliance Acts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply to every common carrier and every vehicle subject to the act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three, commonly known as the "Safety Appliance Acts."

Sec. 2. That on and after July first, nineteen hundred and eleven, it shall be unlawful for any common carrier subject to the provisions of this Act, to haul, or permit to be hauled or used

on its lines any car subject to the provisions of this Act not equipped with appliances provided for in this Act, to-wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand holds or grab irons on their roofs at the tops of such ladders: *Provided*, That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose.

Sec. 3. That within six months from the passage of this Act the Interstate Commerce Commission, after hearing, shall designate the number, dimensions, location, and manner of application of the appliances provided for by section two of this Act and section four of the Act of March second, eighteen hundred and ninety-three, and shall give notice of such designation to all common carriers subject to the provisions of this Act by such means as the commission may deem proper, and thereafter said number, location, dimensions, and manner of application as designated by said commission shall remain as the standards of equipment to be used on all cars subject to the provisions of this Act, unless changed by an order of said Interstate Commerce Commission, to be made after full hearing and for good cause shown; and failure to comply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of the Act: *Provided*, That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this sec-

tion with respect to the equipment of cars actually in service upon the date of the passage of this Act. Said commission is hereby given authority, after hearing, to modify or change, and to prescribe the standard height of drawbars and to fix the time within which such modification or change shall become effective and obligatory, and prior to the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard now fixed or the standard so prescribed, and after the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard so prescribed by the commission.

Sec. 4. That any common carrier subject to this Act using, hauling, or permitting to be used or hauled on its line, any car subject to the requirements of this Act not equipped as provided in this Act, shall be liable to a penalty of one hundred dollars for each and every violation, to be recovered as provided in section six of the Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six: *Provided, That* where any car shall have been properly equipped, as provided in this Act and the other Acts mentioned herein, and such equipment shall have become defective or insecure while such car was being used by such carrier upon its line of railroad, such car may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point where such car can be repaired, without liability for the penalties imposed by section four of this Act or section six of the Act of March second, eighteen hundred and ninety-three as amended by the Act of April first, eighteen hundred and ninety-six, if such move-

ment is necessary to make such repairs and such repairs can not be made except at such repair point; and such movement or hauling of such car shall be at the sole risk of the carrier, and nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employee caused to such employee by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure or which is not maintained in accordance with the requirements of this Act and the other Acts herein referred to; and nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of drawbars, in trains or in association with other cars that are commercially used, unless such defective cars contain live stock or "perishable" freight.

Sec. 5. That except that, within the limits specified in the preceding section of this Act, the movement of a car with defective or insecure equipment may be made without incurring the penalty provided by the statutes, but shall in all other respects be unlawful, nothing in this Act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States attorney from any of the provisions, powers, duties, liabilities, or requirements of said Act of March second, eighteen hundred and ninety-three, as amended by the Acts of April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three; and, except as aforesaid, all of the provisions, powers, duties, requirements and liabilities of said Act of March second, eighteen hundred and ninety-three, as amended by the Acts of April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three, shall apply to this Act.

Sec. 6. That it shall be the duty of the Interstate Commerce Commission to enforce the provisions of this Act, and all powers heretofore granted to said commission are hereby extended to it for the purpose of the enforcement of this Act.

Approved, April 14, 1910.

After the passage of this supplemental act the Interstate Commerce Commission entered four orders, one of which is set out in full in one of the briefs filed by the defendant in error in this case. The second is in part set out in the same brief. The third and fourth are omitted, and to the two omitted we briefly direct attention as having some bearing upon the question now under consideration.

One of the orders to which we refer was entered June 6, 1910, and fixed the standard height of the minimum percentage of brake power under the amendment in 1903. (*Thornton*, page 460.) It will be noted that this was seven years after the date fixed by the act, after which date it was unlawful to use cars not so equipped.

The other order was made by the Interstate Commerce Commission, October 10th, 1910. (*Thornton* 461.) It refers to the third section of the act of 1910, approved April 14th, 1910, and recites, among other things that the Interstate Commerce Commission in pursuance of authority in it vested to modify and to prescribe the standard height of draw bars, (as provided in the act of 1893) and to fix the time within which such modification or change shall become effective and obligatory, made a rule that the standard height of draw bars be modified (specifying the change) and concluding with the following: "And it is further ordered that such modification or change shall become effective and obligatory December 31, 1910." It will be noted that Section 5 of the act of 1893 provides, "And after July 1, 1895, no cars, either loaded or unloaded, shall be in interstate commerce traffic which do not comply with the standard above provided for."

Upon the 13th day of March in 1911, two orders were made by the Interstate Commerce Commission, both of which refer specifically to the Supplemental Safety Appliance Act of 1910. One of these orders is in part set out in the brief for the defendant in error. As we deem it more or less important we have caused the entire order to be printed and placed in the back of this argument, where it will be found on page 53.

The other order for convenience, we here recite in full.

INTERSTATE COMMERCE COMMISSION
ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 13th day of March, A. D. 1911.

Present:

JUDSON C. CLEMENTS,	}	Commissioners.
CHARLES A. PROUTY,		
FRANKLIN K. LANE,		
EDGAR E. CLARK,		
JAMES S. HARLAN,		
CHARLES C. McCHORD,		
BALTHASAR H. MEYER,		

In the matter of the extension of the period within which the requirements of an act entitled, "An act to supplement 'an act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes and for other purposes; and other safety appliance acts, and for other purposes,'" approved April 14, 1910, as amended by "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1912, and for other purposes," approved March 4, 1911.

Whereas, Pursuant to the provisions of the act above stated, the Interstate Commerce Commission, by

its orders duly made and entered on October 13, 1910, and March 13, 1911, has designated the number, dimensions, location, and manner of application of the appliances provided for by Section 2 of the act aforesaid and Section 4 of the act of March 2, 1893, as amended April 1, 1896, and March 2, 1903, known as the "Safety Appliance Acts"; and whereas the matter of extending the period within which common carriers shall comply with the provisions of Section 2 of the act first aforesaid being under consideration, upon full hearing and for good cause shown:

It is ordered, That the period of time within which said common carriers shall comply with the provisions of Section 3 of said act in respect of the equipment of cars in service on the 1st day of July, 1911, be, and the same is hereby, extended as follows, to-wit:

FREIGHT-TRAIN CARS

(a) Carriers are not required to change the brakes from right to left side on steel or steel underframe cars with platform end-sills, or to change the end-ladders on such cars, except when such appliances are renewed, at which time they must be made to comply with the standards prescribed in said order of March 13, 1911.

(b) Carriers are granted an extension of five years from July 1, 1911, to change the location of brakes on all cars other than those designated in paragraph (a) to comply with the standards prescribed in said order.

(c) Carriers are granted an extension of five years from July 1, 1911, to comply with the standards prescribed in said order in respect of all brake specifications contained therein, other than those designated in paragraphs (a) and (b), on cars of all classes.

(d) Carriers are not required to make changes to secure additional end-ladder clearance on cars that have ten or more inches end-ladder clearance, within thirty inches of side of car, until car is shopped for work amounting to practically rebuilding body of car, at

which time they must be made to comply with the standards prescribed in said order.

(e) Carriers are granted an extension of five years from July 1, 1911, to change cars having less than ten inches end-ladder clearance, within thirty inches of side of car, to comply with the standards prescribed in said order.

(f) Carriers are granted an extension of five years from July 1, 1911, to change and apply all other appliances on freight train cars to comply with the standards prescribed in said order, except that when a car is shopped for work amounting to practically rebuilding body of car, it must then be equipped according to the standards prescribed in said order in respect to handholds, running-boards, ladders, sill-steps and brake-staffs; *Provided*, that the extension of time herein granted is not to be construed as relieving carriers from complying with the provisions of Section 4 of the Act of March 2, 1893, as amended April 1, 1896, and March 2, 1903.

(g) Carriers are not required to change the location of handholds (except end-handholds under end-sills), ladders, sill-steps, brake-wheels, and brake-staffs on freight-train cars where the appliances are within three inches of the required location, except that when cars undergo repairs they must be made to comply with the standards prescribed in said order.

PASSENGER-TRAIN CARS

(h) Carriers are granted an extension of three years from July 1, 1911, to change passenger-train cars to comply with the standards prescribed in said order.

LOCOMOTIVES, SWITCHING

(i) Carriers are granted an extension of one year from July 1, 1911, to change switching locomotives to comply with the standards prescribed in said order.

LOCOMOTIVES, OTHER THAN SWITCHING

(j) Carriers are granted an extension of two years from July 1, 1911, to change all locomotives of other classes to comply with the standards prescribed in said order.

A true copy.

Edw. A. Moseley,
Secretary.

It will be noted that these two orders are to be effective at once. That one (above set forth) refers to and is in relation to "extension of the period within which common carriers shall comply with the requirements of an act entitled," etc., (designating the Supplemental Act of 1910).

The other order relates solely to standardization, to size, number and manner of placing the equipment *without any provision whatever for an extension of time to the railroad companies in so doing.*

It is insisted by counsel for defendant in error that the order extending the time period herein above set forth does not apply to the provisions of the statute as to ladders and grab irons on the roof of the car, and that if any such order be made, the Interstate Commerce Commission was without authority so to do.

It certainly must be conceded that the only safety appliance act making any provision for ladders and grab irons on the roof a car is under the Supplemental Safety Appliance Act of 1910. We do not believe we are overstating the proposition when we say that if the act of 1910 made no provision as to such ladders and grab irons on the roof of the car, that the defendant in error is without remedy under the Supplemental Safety Appliance Act of 1910. The Supplemental act of 1910 in its provisions as to ladders and grab irons upon the roof of cars will be noted as providing in section 2 thereof that "all cars *requiring* secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall be equipped with secure handholds or grab irons on their roofs at

the top of such ladders." It will be noted that *every* car is not to be equipped with ladders. Only cars *requiring* secure ladders shall be so equipped. And who is to determine this question? The railroad company, the employee, the Master Car Builders Association, the Interstate Commerce Commission, or is it a question of fact to be determined by the courts in each particular case, whether under the circumstances the particular car was one of the type used for a purpose which *required* a secure ladder or a *secure handhold or grab iron* at the top of the ladder? Counsel for defendant in error wishes this court to understand that he is not discussing *ladders*, but "handholds" or "grab irons." We are quite willing that he should rest his proposition upon so narrow a ground, for it is utterly immaterial whether his strained construction be granted or rejected, inasmuch as it is perfectly clear that the only provision for either is in the same act, one linked with the other—they are inseparable, and must be considered as a part really of but one equipment or appliance. The wording of Section 2 is as follows: "All cars requiring secure ladders * * * shall be equipped with such ladders and running boards," then note a coma, and the act proceeds: "And all cars having ladders shall *also* be equiped with secure handholds or grab irons on their roofs at the top of *such* ladders." Under the construction sought by counsel for the defendant in error the act might read something in this manner: All cars must be equipped with continuous air brakes; all cars requiring automatic couplers shall be equipped with automatic couplers; all cars requiring ladders shall be equipped with ladders; all cars *now* having ladders shall be equipped with handholds or grab irons on their roofs at the top of such ladder. In other words, they seek to take the latter part of the above mentioned sentence and read it without reference to the preceding words. It will be noted that the Interstate Commerce Commission did not construe the act as counsel for defendant in error does. We believe it was clearly intended that the commission was the only authority to determine the cars "*requiring* secure ladders." It will

be noted that the commission's order of standardization inserted in the back of this brief completely specifies equipment for some fifteen or sixteen types of cars all of which is provided for in Section 2 of the act of 1910, and in some seven, or perhaps eight, of these types of cars it was determined that they were not cars *requiring* secure ladders, for none are specified or provided for, and it might with some emphasis be said that nowhere in the record in this case can be found any tagible evidence to disclose that the defendant in error fell from a car *requiring* a secure ladder or that there is any evidence whatever to bring the Plaintiffs in Error within the provisions of the Supplemental Act of 1910.

The contention of the defendant in errors is: that it is immaterial whether a ladder was *required* for a car or not. If there was a ladder, then immediately after the time stated in the act July 1, 1911, there must be a secure grab iron or handhold on the roof of it. It becomes wholly immaterial what provisions, if any, were made by Congress as to the ladders, they may be decayed, unfit for use, or what not. Only the handhold must be secure. And if the man fell *from the ladder* and was injured before the expiration of the time fixed by the Interstate Commerce Commission he could not recover under the Supplemental Safety Appliance act, but if he fell from a *defective handhold*, a part of the same appliance, a recovery was assured. We ask with some emphasis, is there any reason why Congress should have provided that the lower rung of the ladder should be put upon the car within fifteen months, and that an extension of time might be granted for five years to place the roof handhold on the car. If under the act of 1910 there is any sane reason for the claimed distinction between the grab iron on the roof of a car and the ladder approaching it, with all due respect to counsel for defendant in error we have been unable to discover it in their briefs.

In *Pennell v. Philadelphia & R. R. Co.*, 231 U. S. 675, an action was brought under the Federal Safety Appliance Act.

The tender and locomotive were coupled with link and pin which pulling apart killed the fireman. There was a judgment for the company.

Believing the opinion in that case is worthy of special note in considering the construction of the words in the Act of 1910, viz: "All cars requiring secure ladders * * * shall be equipped with such ladders * * * and all cars having ladders shall also be equipped with secure hand holds or grab irons on the roofs at the top of such ladders."

We quote the following:

"It is further contended by plaintiff that the necessity of an automatic coupler between engine and tender is determined by the amendment of the act of 1893, enacted in 1903 (32 Stat. at L. 943, Chap. 976, U. S. Comp. Stat. Supp. 1911, p. 1314). It may be necessary, it is said, under the statute of 1893, to 'bring the word 'tender' within the definition of the word 'car,' " but that this 'is totally unnecessary when we come to consider and apply the subsequent statutes, because here we find the word 'tender' specifically used, and used, too, in evident contradiction to the words 'locomotives' and 'cars.' " The amendment repeats the title of the prior acts, provides that their provisions "shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type," and that their provisions and requirements, including automatic couplers, "shall be held to apply to all trains, locomotives, tenders, cars, and smaller vehicles on any railroad engaged in interstate commerce." But this act does not destroy the integrity of the locomotive and tender. It is entirely satisfied by requiring the automatic coupler between the tender and the cars constituting the train, that is, to the rear end of the tender. And this requirement fulfils the purpose of the statute, which, we have seen, does not re-

gard the strength of the connections between the cars, even if it may be supposed that an automatic coupler is the stronger, but does regard safety in making and unmaking the connections. This being kept in mind, the construction of the statute is not difficult. And the construction of the statute is the main concern. If it is not mandatory, as we think it is not, of an automatic coupler between the engine and the tender, the contentions of plaintiff are without foundation. We need not refer to them with further detail except to say that the custom of the railroads could not, of course, justify a violation of the statute, but that custom, having the acquiescence of the Interstate Commerce Commission, is persuasive of the meaning of the statute."

B: HAS THE INTERSTATE COMMERCE COMMISSION BY ANY VALID ORDER EXTENDED THE TIME FOR THE CARRIER'S COMPLIANCE WITH THE STATUTE PASSED IN 1910?

We ask that an inspection be made of the Interstate Commerce Commission's order in relation to standardization, to which we have before referred, in this, that in a number of instances there is no provision whatever for either ladders or grab irons in the top of the car above such ladder. Now until the Interstate Commerce Commission has designated what car or cars shall require secure ladders with handholds upon the roof of such cars, what possible liability can arise under the safety appliance act?

Under Section 3 of the Supplemental act of 1910 it is provided:

a. Within six months from the passage of the act, the Interstate Commerce Commission shall designate the number, dimensions, location and manner of application of the appliances named in section 2 (this includes ladders, running boards and grab irons on the roof of cars).

b. Notice of the Commission's action shall be given to all common carriers, and thereafter such number, lo-

cation and manner of application shall remain as the standard of equipment.

c. Under Section 3 the Interstate Commerce Commission may extend the period within which any common carrier "shall comply with the provisions of this (3rd) section with respect to the equipment of cars actually in service upon the date of the passage of this act." It is claimed by the defendant in error that the power given the commission to extend the time specifically refers to the things to be done in Section 3 and Section 3 only, and inasmuch as the provision for secure grab irons upon the roof of the car over such ladders is in Section 2, the Interstate Commerce Commission did not have the power, and Congress did not intend that it should have the power, to make any extension of time as to the provisions of Section 2. That this position is clearly erroneous, we submit is very clear on a brief examination of the act.

Every appliance provided for in the Supplemental Act of 1910 is named and stated in Section 2 of the act, and in no other section. Section 3 is for the sole purpose of vesting power in the commission to carry into effect the provisions of Section 2, and this in a manner and at time to be determined by the Commission. If the construction be placed upon Section 3 now advanced by opposing counsel, there is not a single appliance named in the act of 1910 for the application of which the commission could have extended the time period beyond July 1, 1911. For none are required or stated in Section 3 of the act.

Section 3 of the act provides, "That within six months from the passage of this act the Interstate Commerce Commission, after full hearing, shall designate the number, dimensions, location and manner of application of the *appliances provided for by Section 2 of this act* and Section 4 of the act of March 2, 1893, * * * provided that the Interstate Commerce Commission may on full hearing and for good cause extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of

cars actually in service upon the date of the passage of this act." * * *

It is very clear that Section 2 is so named that it was embodied in and became a part of Section 3. Reading the act as an entirety, is it possible to hold that it was the intention of Congress to require the carrier to place upon its cars sill-steps, hand brakes, ladders and hand-holds by July 1, 1911? To require that they be standardized and so placed under the direction of the Interstate Commerce Commission, and that the Interstate Commerce Commission was authorized by the act to withhold the specifications for at least six months out of the fifteen, which upon the face of the act would leave the carrier approximately eleven months within which to comply with the provisions of this act.

Counsel for defendant in error insist that Congress granted a reasonable time in stating fifteen months as the period within which the act was to be complied with.

Upon the face of the act *six months* after the passage of the act the Interstate Commerce Commission was allowed to fix the number, dimensions, location and manner of application of the appliances. So that as a matter of fact, the carrier has from, approximately, September 1, 1910, to July 1, 1911. A glance at the order entered by the Interstate Commerce Commission as to the details to be worked out in the equipment of practically every car in the United States, discloses the utter absurdity of this position. There were approximately 1300 interstate railroads in the United States. There are approximately 2,000,000 cars. The larger part of these cars were in active service, supplying the demands of the commercial world. They were scattered far and near. Many of them moved slowly. They could not as a whole be withdrawn from the service. The railroad shops would not at any one time hold two per cent of the cars. They were to be supplied with sill-steps, efficient hand brakes, ladders, running boards and grab irons on the roof of every car over every ladder—all this, not to be selected at the whim or the judgment of some master mechanic, but to be in di-

rect conformity with the rules, dimensions and numbers fixed by the Interstate Commerce Commission; and this within a period of eleven months. This as we read the face of the act. But it appears that as a matter of fact the order by the Interstate Commerce Commission was not entered until the *13th day of March in 1911*.

Brief reference is here made to the act of Congress, passed March 4, 1911, or nine days before the order was entered by the Commission. The act was embraced in Sundry Civil Appropriation Act for the fiscal year ending June 30, 1912. (C 285, H. R. 32909.)

It is as follows:

"That the jurisdiction of the Interstate Commerce Commission to extend the period within which any common carrier shall comply with the provisions of section three of the Act entitled, 'An Act to supplement 'An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes,' and other safety-appliance Acts, and for other purposes,' approved April fourteenth, nineteen hundred and ten, shall apply to cars actually placed in service between the date of the passage of said Act and the first day of July, nineteen hundred and eleven, in the same manner and to the same extent that it applies to cars actually in service upon the date of the passage of said Act."

Turning again to the order of the Commission of March 13, 1911, it will be seen:

It specifically states that the number, dimensions, location and manner of application of the appliances provided for by Section 2 of the act of April 14, 1910, and Section 4 of the act of March 2, 1893, shall be as follows:
 * * * so that in reality it was not until the *13th day of March in 1911*, the order was made allowing to the

carrier three months and seventeen days within which to repair and re-equip practically every railroad car in the United States; and this without hindrance or delay to the wheels of commerce.

But it is said by counsel that they are not discussing ladders. They are evidently not discussing efficient hand brakes, nor running boards, nor sill-steps. They all are a part of Section 2. It will be noted from the order of the Interstate Commerce Commission that the specifications provide for the location and number of the secure handholds or grab irons at the end of the car. What possible theory can a construction be had by which everything is eliminated from Section 3 except "secure grab upon the roof of the cars where there are ladders and that all else was legitimately extended under the order of the Interstate Commerce Commission until 1916?

We respectfully submit that under the construction sought by counsel for defendant in error an impossible burden would have been placed upon the railroad companies. The railroad companies knew it, the employees knew it, Congress knew it, and it gave to the commission the power to extend this time. Therefore the Interstate Commerce Commission entered the rule granting an extension of five years, until July 1, 1916, under this title:

"IN THE MATTER OF THE EXTENSION OF THE PERIOD WITHIN WHICH COMMON CARRIERS SHALL COMPLY WITH THE REQUIREMENTS OF AN ACT ENTITLED AN ACT TO SUPPLEMENT AN ACT TO PROMOTE THE SAFETY OF EMPLOYEES," etc. And again, "Whereas pursuant to the provisions of the act above stated the Interstate Commerce Commission by its orders duly made and entered on October 13, 1910, and March 13, 1911, has designated the number, dimensions, location and manner of application of the *appliances provided for by Section 2 of the act aforesaid* * * * and *whereas the manner of extending the period within which common carriers shall comply with the provisions of Section 2 of the act first aforesaid*, being under consideration, upon full hearing and for good cause shown:

It is ordered that the period of time within which said common carriers shall comply with the provisions of Section 3 of said act in respect to the equipment of cars in service on the first day of July in 1911, be, and the same is hereby extended as follows."

Under section f, (page 31 herein) of this order, and after having extended the time as to various parts of Section 2 it is provided: "Carriers are granted an extension of five years from July 1, 1911, to change *and apply all other appliances on freight cars* to comply with the standard prescribed in said order, except that when a car is shopped for work amounting to practically rebuilding body of car it must then be equipped according to the standard prescribed in said order in respect to handholds, running boards, ladders, sill-steps and brake-staffs."

It is certainly true that the order of the Interstate Commerce Commission is not binding upon this court in construing the statute, but it certainly is entitled to consideration, inasmuch as it is the big factor that is working out the problem in relation to railroad matters in this country. And under this order it will be specifically noted that Section 3 is clearly to be taken as containing all of the equipment provided for in Section 2. There is not a single provision made in this order for an extension of time as to any equipment that is not provided for in Section 2 of the Supplemental Act of 1910, and as indicated by the italics in our quotation from this order handholds are specifically mentioned as one of the things involved in the extension of five years from July 1, 1911; and as to these handholds there can certainly be no question but that it applies specifically to handholds on the top of cars upon which ladders were required upon cars requiring the same.

In this connection it is interesting to note that upon September 15, 1915, certain carriers applied to the Commission for extension of time beyond that named in the order of March 13, 1911.

The matter was decided November 2, 1915. Under the report made by the Commission at that time, after setting forth the extension granted under the above named order they state the following:

"It is urged as a principal basis for relief that the carriers have acted in good faith and have made an earnest effort to comply with the Commission's requirements, but that because of the financial and, to a certain extent, the physical difficulties involved, they will not be able fully to meet these requirements within the prescribed time."

"Out of a total of 2,025,254 cars in service on July 1, 1911, on roads having a total mileage of about 232,000 miles, it is estimated by the carriers that 1,669,064 cars, or about 82 per cent, will be either equipped in accordance with the order or removed from service by July 1, 1916, leaving about 356,000 cars still unequipped on that date. No information is available which will show, for the purpose of comparison, the yearly progress made in equipping the above 1,669,064 cars. The following table, however, compiled from data submitted by the carriers at and subsequent to the hearing, indicates the progress of equipment with respect to 89 lines having a total mileage of 203,652 miles and an individual mileage of approximately 300 miles or over, and will perhaps afford a more comprehensive view of the general situation:

Cars in service July 1, 1911.....1,849,222

Cars equipped year ended June 30—

1912.....	122,213
1913.....	283,599
1914.....	315,184
1915.....	336,938

Total cars equipped June 30, 1915 1,057,934

Estimated number of cars to be equipped or removed from service year ending June 30, 1916.....	483,432
Estimated number of cars equipped by July 1, 1916.....	1,541,366
Estimated number of cars unequipped on July 1, 1916.....	307,856

It thus appears that about 57 per cent. of the above cars were equipped on July 30, 1915, and that it is estimated that about 83 per cent. will be either equipped or removed from service by July 1, 1916.

It may be conceded that the year ending June 30, 1914, was an abnormal one in railroad-ing and that the general business depression during that period had a marked effect upon the volume of traffic, resulting in a large decrease in revenue. During the past fiscal year the financial difficulties of many of the roads have doubtless been aggravated by reason of the war. It is stated on behalf of the carriers that this is particularly true of those roads in the southern section of the country and that these roads experienced a decrease in gross revenues of from 10 to 20 per cent. due to the fact that their principal commodities were so vitally affected.

Notwithstanding these conditions it appears that, while there are a number of exceptions as to individual roads, the figures as a whole show a gradual increase in the number of cars equipped during each successive year and that the greatest number of cars was equipped in 1914 and 1915.

In this connection it is perhaps proper to take into consideration that some time was consumed in making the necessary preparation and preliminary plans for an undertaking of this magnitude, involving, it is stated, an expenditure of about \$45,000,000. It is also doubtless

true that as the carriers gained a more thorough working knowledge of the requirements they were in a position to equip a larger number of cars in a given period."

Again:

"Another and most important consideration which must be borne in mind is that the purpose of the Congress in enacting this statute was the conservation of human life and limb. While we can not entirely ignore the necessities of the carriers, yet, when we consider that any extension, however short, may result in the death or injury of an employee by reason of the fact that a safety appliance is insecurely applied, or is missing or beyond his reach owing to lack of uniformity in equipment, it is manifest that too great weight should not be given to arguments of hardship and inconvenience to the exclusion of the interests of the employees and of the public.

Upon consideration of all the facts and circumstances appearing of record, we are of opinion and find that a further extension of 12 months is adequate, and that this extension should be uniform to all common carriers subject to said act of April 14, 1910. The time granted common carriers by paragraphs (b), (c), (e), and (f) of the order of the Commission of March 13, 1911, "In the matter of the extension of the period within which common carriers shall comply with the requirements of an act entitled, 'An act to supplement "An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes and for other purposes," approved April 14, 1910, as amended by "An act making

appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1912, and for other purposes," approved March 4, 1911, "will accordingly be further extended for a period of 12 months from July 1, 1916."

An appropriate order will be entered."

Thereupon an order was entered in which the commission found that certain railroads having made application for a further extension of time within which to comply with the provisions of *Section 3* of an act, etc. (designating the act of 1910 and 1911) ordered that the period of time granted under the former order be extended twelve months as to certain paragraphs named in said order including "F" above referred to.

C: HAS THE QUESTION NOW HERE PRESENTED FOR CONSIDERATION BEEN SO DECIDED BY THIS COURT THAT THE QUESTION INVOLVED IS SETTLED AND DETERMINED?

With some care we have examined the two briefs submitted by counsel for defendant in error, and we have been unable to find cited a single authority deciding the question involved in this case.

In the case of *Coleman v. I. C. R. R. Co.*, Advance Sheets N. W. Reported, Jan. 28, 1916, 155 N. W. page 763, the very issue in this case was submitted and the holding by the Supreme Court of Minnesota was directly against the contention of the plaintiffs in error in this suit.

An examination of this case will disclose that the plaintiff in that suit brought an action under the Supplemental Safety Appliances Act approved April 14, 1910. The evidence discloses that while the plaintiff was attempting to climb a ladder upon the side of one of the defendant's cars one of the rungs being insecure, pulled out, plaintiff fell to the ground and was injured. At the close of the plaintiff's testimony a motion was made by the defendant railroad company for a directed verdict. The motion was allowed. For the same cause involved in

this case, namely, that under the order of extension made by the Interstate Commerce Commission under the Act of 1910, the defendant railroad Company was relieved until the expiration of the time named in that order from placing secure ladders upon its cars. The issues were narrowed and more clearly defined by the attorney for the plaintiff injecting into the record the claim that his right to recover was based solely upon the provisions of the Supplemental Safety Appliance Act of 1910.

The Supreme Court of Minnesota in this case after reciting the various acts of congress in relation to Safety Appliances and after setting forth the substance of the order by the Interstate Commerce Commission and quoting at some length from Section 2 of the Supplemental Act of 1910 stated the following:

“The sole purpose of this part of the statute was to impose upon the railroads the absolute duty of maintaining their car equipments in safe condition for use. The language is clear and positive, and declares that on and after the date named it shall be unlawful to use such cars when not so equipped. It will not, as we read it, admit of qualification by judicial construction, and was intended to apply to cars in use at the time the act was passed as well as those thereafter brought into service. Section 3, upon which defendant relies in support of the contention that Section 2 was under suspension, relates to an entirely different branch of the same subject, and clearly was not intended as a qualification of the express provisions of Section 2. It was evidently deemed that the safety of the traveling public, as well as railroad employes engaged in the train service, would best be protected by some uniform method or standard of car equipment applicable to all interstate roads, and to that end authority to fix such standard was, by Section 3, vested in the Interstate Commission. The reasons for the requirement of uniformity in equipment are

plain. The cars of different roads operating throughout the states are promiscuously hauled, all are not equipped in the same manner, and a train composed of cars differently supplied with the appliances referred to in the statute results in confusion to the employes, and adds materially to the dangers connected with their work. With a uniformity of equipment confusion is eliminated and danger of injury lessened. So it seems clear that the sole purpose of Section 3 was to authorize the Commission to prescribe a uniform standard for the equipment of the cars of all the interstate railroads, and to require conformity therewith by such roads. The Commission was by the terms of the statute required to formulate rules fixing such standard within the time stated therein, and its order in the premises was given the force and effect of law. Congress had in mind that it would, as to some of the roads, be a practical impossibility to at once meet the demands of the new standard, and the Commission was further authorized to extend to them such time as would afford full opportunity of compliance. But in so providing it clearly was not the intention that during the period taken for installing the standard equipment defective cars might be used and employed in the train service; nor was it intended that during that period Section 2 of the act should remain operative. If such had been the intention, then that section might well have been omitted altogether, and Section 3 made the substance and embodiment of the whole enactment. For then its operation would have been limited and in harmony with the contention of defendant, namely, as an enactment requiring, within such time as the Interstate Commission might fix therefor, all railroads to equip and conform their cars to the standard there provided for. This

view of the act cannot be adopted without doing violence to Section 2. Congress intended that Section 2 be a part of the statute, and the clear language thereof cannot be rejected, or held inoperative pending the installation of the standard of equipment to be ordered by the Commission without running counter to the main purpose of the Act. The section must therefore stand, as a part of the Statute, and be construed as imposing the duty upon railroads of maintaining their car equipment in secure and safe condition for use after July 1, 1911. Section 3 must be construed as a requirement of a uniform standard for such equipment, and that the extension of time within which to conform thereto has no reference to, and does not relieve from, the duty to maintain present equipment in secure and safe condition."

It was contended there as it is contended here by the Plaintiff in Error viz.: the Illinois Central Railroad Company that to hold Section 3 of the Act of 1910 as the only part of the Act of 1910 extended by the order of Interstate Commerce Commission was wrong.

Note that the Minnesota Court says "So it seems clear that the sole purpose of Section 3 was to authorize the Commission to prescribe a uniform standard for the equipment of cars for all the interstate railroads and to require conformity therewith with such roads." It will be observed that some of the most important provisions made by the Safety Appliances Act for the equipment of cars for safety appliances was under the terms and provisions of the act of 1910. How unfair the construction would be to contend that under Section 2 this equipment was required and the date which was to fix the number, the size and the designs of such equipment was left to the arbitrary will of the Interstate Commerce Commission to fix when and as they liked.

We also submit that it completely destroys the theory advanced by the defendant in error in this case. Counsel

for the defendant in error herein insists that they are not submitting a construction of the act for ladders but for grab irons, intimating that the provisions of the act in relation to ladders, sill-steps and the like is probably extended and they rely upon that part of the sentence in Section 2 which provides "and all cars having ladders shall also be equipped with secure handholds or grabirons on their roofs at the top of such ladders." The Supreme Court of Minnesota says that Section 3 of the act of 1910 was the only part of the act extended by the order of the Interstate Commerce Commission. And that the object of Section 2 is not to be taken as having any application to the equipment provided therein. And that Section 2 cannot be held inoperative pending the installation of the standard of equipment to be ordered by the Commission without running counter to the main purpose of the act.

By what process Section 2 can possibly be excluded from Section 3 and considered as not within its terms, we are quite at a loss to understand and we respectfully submit with all due respect to the Supreme Court of Minnesota that the reasoning announced in the Coleman case but illustrates and emphasizes our construction of the act itself, and we respectfully submit that the decision by the Supreme Court of Minnesota is not sustained by a fair analysis of the Act.

Much emphasis is made by counsel for defendant in error upon the case of *Texas & Pacific Ry. Co. v. Rigsby*, in the Advance Sheets of the Supreme Court Reporter, dated May 15, 1916. We have read this case with some care. The question involved in the case at bar was neither raised nor discussed, nor was this court called upon to decide the question here involved.

No order of the Interstate Commerce Commission was submitted. The sole, simple question there was an insistence by the railroad company, that Rigsby was not within the protection of the act because he was not coupling or uncoupling cars at the time he was injured, and this court distinctly, by inference, recognizes the dis-

tinction hereinbefore made between the act of 1893 and the act of 1910 by stating that the reference made under the above claim was to Section 4 of the act of 1893 which requires "secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars." Then says the opinion: "This action was not based upon that provision, however, but upon Section 2 of the amendment of 1910, and sets out Section 2 of the act of 1910, and adds the following: "There can be no question that a box car having a hand brake operated from the roof *requires a secure ladder to enable the employee to safely ascend and descend*, and that the provision quoted was intended for the special protection of employees engaged in duties such as that which the plaintiff was performing."

That is exactly what we have contended the construction of the act of 1910 means, and which is expressly denied by counsel for defendant in error. The ladder and the handhold upon the roof of the car are equipments which are not to be divided, or considered apart.

The proposition involved in the case at bar is, when did the law of 1910 go into effect. If the Interstate Commerce Commission had the power and authority to make this order, and if the railroad company under that order was given a valid, legal extension of the rule within which to comply with the provisions of that statute then we submit that the act does not become effective, and that no recovery can be had thereunder until the time named in the order of the Interstate Commerce Commission has expired. The claim by counsel for defendant in error is that this court is bound by the Rigsby case, and should refuse to consider the question now presented, evidently, upon the theory of *stare decisis*. We submit that as a general rule where a principle of law has become settled by a series of decisions it is of course binding upon the courts and should be followed, but that a single decision is not necessarily binding. The doctrine is not imperative, and an opinion is not an authority for what is not mentioned therein and what does not appear to have been

suggested to the court from which the opinion emanates. *Durousseau v. United States*, 6 Cranch, 307, ex part Crane, 5 Pet. 203, *Decatur v. Paulding*, 14 Pet. 607, *Gage v. Parker*, 178 Ill. 455; *Larson v. First Nat. Bank*, 92 N. W. (Neb.) 729.

We therefore respectfully submit that the rule asked for in this motion in behalf of defendant in error is without merit and should not be considered.

III

GRAB IRONS OR HANDHOLDS UNDER THE ACT OF 1893

In one of the briefs we find the following: "The act of 1893 requiring these grab irons upon the sides and ends of cars. *including of course the grab irons on the roof.*" (Page 7.)

Again: "So by the act of 1903 the railroads were required to have these grab irons or handholds on all cars which they used." Again on page 9, under Section III, "In order to get a clear view of this act let us consider what appliances were required by the Act of 1893. Here they are." Then after quoting the provision for certain equipment under two sections appears the following: "3. Requiring them (meaning the railroads) to have handholds and grab irons on their cars for greater security of *the men.*" It will be noted with some interest that in quoting the provision of the act of 1893 upon page 9 of this brief there is an omission of the provision of the statute which is material, in this, the act provides that the cars shall be equipped with secure grab irons or handholds in the *ends and sides of each car* "for greater security to men *in coupling and uncoupling cars.*" (Italics indicate omissions.) The act of 1910 provides that all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards and all cars having ladders shall also be equipped with secure handholds or grab irons on their roofs at the top of such ladders. The remarkable part of the argument advanced in said brief is the assumption that grab

irons for every part of a car were required under the act of 1893, and that anything about a car evidently is a "grab iron" within the meaning of that act, and notwithstanding the express wording of the act of 1893 as to the location and purpose for grab irons as there provided anything may be designated as "grab iron" and is required under the law of 1893.

That this theory is erroneous we submit is clearly evident.

IN CONCLUSION

The premises considered we say:

- 1: This court has jurisdiction of this cause.
- 2: The issue here is not frivolous and has not been decided by this court.
- 3: That a fair construction of the Supplemental Safety Appliance Act of 1910, granted to the Interstate Commerce Commission power to extend the time for compliance with Section 2 of that act, and,
- 4: That the Commission did by virtue of that power extend the time until July 1, 1916.

That the Defendant in Error therefore has no cause of action under the Supplemental Act of 1910.

Respectfully submitted.

CHARLES C. LEFORGEE,
Attorney for Plaintiff in Error.

MR. BLEWETT LEE,
MR. CHARLES N. BURCH,
MR. ROBERT B. MAYS,
Of Counsel.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 13th day of March, A. D. 1911.

Present:

JUDSON C. CLEMENTS,	}	Commissioners.
CHARLES A. PROUTY,		
FRANKLIN K. LANE,		
EDGAR E. CLARK,		
JAMES S. HARLAN,		
CHARLES C. MCCORD,		
BALTHASAR H. MEYER,		

IN THE MATTER OF DESIGNATING THE NUMBER, DIMENSIONS, LOCATION, AND MANNER OF APPLICATION OF CERTAIN SAFETY APPLIANCES.

Whereas by the third section of an act of Congress approved April 14, 1910, entitled "An act to supplement 'An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes,' and other safety appliance acts, and for other purposes," it is provided, among other things, "That within six months from the passage of this act the Interstate Commerce Commission, after hearing, shall designate the number, dimensions, location, and manner of application of the appliances provided for by section two of this act and section four of the act of March second, eighteen hundred and ninety-three, and shall give notice of such designation to all common carriers subject to the provisions of this act by such means as the Commission may deem proper, and thereafter said number, location, dimensions, and manner of application as designated by said Commission shall remain as the standards of equipment to be used on all cars subject to the provisions of this act, unless changed by an order of said Interstate

Commerce Commission, to be made after full hearing and for good cause shown; and failure to comply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of this act: *Provided*, That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of cars actually in service upon the date of the passage of this act;" and

Whereas hearings in the matter of the number, dimensions, location, and manner of application of the appliances, as provided in said section of said act, were held before the Interstate Commerce Commission at its office in Washington, D. C., on September 29 and 30 and October 7, 1910, respectively; and February 27, 1911;

Now, therefore, in pursuance of and in accordance with the provisions of said section three of said act, and superseding the Commission's order of October 13, 1910, relative thereto

It is ordered, That the number, dimensions, location, and manner of application of the appliances provided for by section two of the act of April 14, 1910, and section four of the act of March 2, 1893, shall be as follows:

BOX AND OTHER HOUSE CARS

HAND-BRAKES:

Number: Each box or other house car shall be equipped with an efficient hand-brake which shall operate in harmony with the power-brake thereon.

The hand-brake may be of any efficient design, but must provide the same degree of safety as the design shown on Pate A.

Dimensions: The brake-shaft shall be not less than one and one-fourth ($1\frac{1}{4}$) inches in diameter, of wrought iron or steel without weld.

The brake-wheel may be flat or dished, not less than fifteen (15), preferably sixteen (16), inches in diameter, of malleable iron, wrought iron or steel.

Location: The hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car, to the left of and not less than seventeen (17) nor more than twenty-two (22) inches from center.

Manner of Application: There shall be not less than four (4) inches clearance around rim of brake-wheel.

Outside edge of brake-wheel shall be not less than four (4) inches from a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill.

Top brake-shaft support shall be fastened with not less than one-half ($\frac{1}{2}$) inch bolts or rivets. (See Plate A.)

A brake-shaft step shall support the lower end of brake-shaft. A brake-shaft step which will permit the brake-chain to drop under the brake-shaft shall not be used. U-shaped form of brake-shaft step is preferred. (See Plate A.)

Brake-shaft shall be arranged with a square fit at its upper end to secure the hand-brake wheel; said square fit shall be not less than seven-eighths ($\frac{7}{8}$) of an inch square. Square-fit taper; nominally two (2) in twelve (12) inches. (See Plate A.)

Brake-chain shall be of not less than three-eighths ($\frac{3}{8}$), preferably seven-sixteenths ($\frac{7}{16}$), inch wrought iron or steel, with a link on the brake-rod end of not less than seven-sixteenth ($\frac{7}{16}$), preferably one-half ($\frac{1}{2}$), inch wrought iron or steel, and shall be secured to brake-shaft drum by not less than one-half ($\frac{1}{2}$) inch hexagon or square-headed bolt. Nut on said bolt shall be secured by riveting end of bolt over nut. (See Plate A.)

ORDER

Lower end of brake-shaft shall be provided with a trunnion of not less than three-fourths ($\frac{3}{4}$), preferably one (1), inch in diameter extending through brake-shaft step and held in operating position by a suitable cotter or ring. (See Plate A.)

Brake-shaft drum shall be not less than one and one-half ($1\frac{1}{2}$) inches in diameter. (See Plate A.)

Brake ratchet-wheel shall be secured to brake-shaft by a key or square fit; said square fit shall be not less than one and five-sixteenths ($1\frac{5}{16}$) inches square. When ratchet-wheel with square fit is used provision shall be made to prevent ratchet-wheel from rising on shaft to disengage brake-pawl. (See Plate A.)

Brake ratchet-wheel shall be not less than five and one-fourth ($5\frac{1}{4}$), preferably five and one-half ($5\frac{1}{2}$), inches in diameter and shall have not less than fourteen (14), preferably sixteen (16), teeth. (See Plate A.)

If brake ratchet-wheel is more than thirty-six (36) inches from brake-wheel, a brake-shaft support shall be provided to support this extended upper portion of brake-shaft; said brake-shaft support shall be fastened with not less than one-half ($\frac{1}{2}$) inch bolts or rivets.

The brake-pawl shall be pivoted upon a bolt or rivet not less than five-eighths ($\frac{5}{8}$) of an inch in diameter, or upon a trunnion secured by not less than one-half ($\frac{1}{2}$) inch bolt or rivet, and there shall be a rigid metal connection between brake-shaft and pivot of pawl.

Brake-wheel shall be held in position on brake-shaft by a nut on a threaded extended end of brake-shaft; said threaded portion shall be not less than three-fourths ($\frac{3}{4}$) of an inch in diameter; said

nut shall be secured by riveting over or by the use of a lock-nut or suitable cotter.

Brake-wheel shall be arranged with a square fit for brake-shaft in hub of said wheel; taper of said fit nominally two (2) in twelve (12) inches. (See Plate A.)

Brake-Step:

If brake-step is used, it shall be not less than twenty-eight (28) inches in length. Outside edge shall be not less than eight (8) inches from face of car and not less than four (4) inches from a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill.

Manner of Application: Brake-step shall be supported by not less than two metal braces having a minimum cross-sectional area three-eighths ($\frac{3}{8}$) by one and one-half ($1\frac{1}{2}$) inches or equivalent, which shall be securely fastened to body of car with not less than one-half ($\frac{1}{2}$) inch bolts or rivets.

Running-Boards:

Number: One (1) longitudinal running-board.

On outside-metal-roof cars two (2) latitudinal extensions.

Dimensions: Longitudinal running-board shall be not less than eighteen (18), preferably twenty (20), inches in width.

Latitudinal extensions shall be not less than twenty-four (24) inches in width.

Location: Full length of car, center of roof.

On outside-metal-roof cars there shall be two (2) latitudinal extensions from longitudinal running-board to ladder locations, except on refrigerator cars where such latitudinal extensions can not be applied on account of ice hatches.

Manner of Application: Running-boards shall be continuous from end to end and not cut or hinged at any point: *Provided*, That the length and

width of running-boards may be made up of a number of pieces securely fastened to saddle-blocks with screws or bolts.

The ends of longitudinal running-board shall be not less than six (6) nor more than ten (10) inches from a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill; and if more than four (4) inches from edge of roof of car, shall be securely supported their full width by substantial metal braces.

Running-boards shall be made of wood and securely fastened to car.

SILL-STEPS:

Number: Four (4).

Dimensions: Minimum cross-sectional area one-half ($\frac{1}{2}$) by one and one-half ($1\frac{1}{2}$) inches, or equivalent, of wrought iron or steel.

Minimum length of tread, ten (10), preferably twelve (12), inches.

Minimum clear depth, eight (8) inches.

Location: One (1) near each side of car, so that there shall be not more than eighteen (18) inches from end of car to center of tread of sill-step.

Outside edge of tread of step shall be not more than four (4) inches inside of face of side of car, preferably flush with side of car.

Tread shall be not more than twenty-four (24), preferably not more than twenty-two (22), inches above the top of rail.

Manner of Application: Sill-steps exceeding twenty-one (21) inches in depth shall have an additional tread.

Sill-steps shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half ($\frac{1}{2}$) inch rivets.

LADDERS:

Number: Four (4).

Dimensions: Minimum clear length of tread: Side ladders sixteen (16) inches; end ladders fourteen (14) inches.

Maximum spacing between ladder-treads, nineteen (19) inches.

Top ladder-tread shall be located not less than twelve (12) nor more than eighteen (18) inches from roof at eaves.

Spacing of side ladder treads shall be uniform within a limit of two (2) inches from top ladder tread to bottom tread of ladder.

Maximum distance from bottom tread of side ladder to top tread of sill step, twenty-one (21) inches.

End ladder treads shall be spaced to coincide with treads of side ladders, a variation of two (2) inches being allowed. Where construction of car will not permit the application of a tread of end ladder to coincide with bottom tread of side ladder, the bottom tread of end ladder must coincide with second tread from bottom of side ladder.

Hard-wood treads, minimum dimensions one and one-half ($1\frac{1}{2}$) by two (2) inches.

Iron or steel treads, minimum diameter five-eighths ($\frac{5}{8}$) of an inch.

Minimum clearance of treads, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: One (1) on each side, not more than eight (8) inches from right end of car; one (1) on each end, not more than eight (8) inches from left side of car; measured from inside edge of ladder-stile or clearance of ladder treads to corner of car.

Manner of Application: Metal ladders without stiles near corners of cars shall have foot guards or upward projections not less than two (2) inches in height near inside end of bottom treads.

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Stiles of ladders, projecting two (2) or more inches from face of car, will serve as foot-guards.

Ladders shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half ($\frac{1}{2}$) inch rivets. Three-eighths ($\frac{3}{8}$) inch bolts may be used for wooden treads which are gained into stiles.

END-LADDER CLEARANCE:

No part of car above end-sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-wheel, brake-step, running-board or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

ROOF-HANDHOLDS:

Number: One (1) over each ladder.

One (1) right-angle handhold may take the place of two (2) adjacent specified roof-handholds, provided the dimensions and locations coincide, and that an extra leg is securely fastened to car at point of angle.

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16) inches.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: On roof of car: One (1) parallel to treads of each ladder, not less than eight (8) nor more than fifteen (15) inches from edge of roof, *except* on refrigerator cars where ice hatches prevent, when location may be nearer edge of roof.

Manner of Application: Roof-handholds shall be securely fastened with not less than one-half ($\frac{1}{2}$)

inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half ($\frac{1}{2}$) inch rivets.

SIDE-HANDHOLDS:

Number: Four (4).

[Tread of side-ladder is a side-handhold.]

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16) inches, preferably twenty-four (24) inches.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: Horizontal: One (1) near each end on each side of car.

Side-handholds shall be not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler, *except* as provided above, where tread of ladder is a handhold. Clearance of outer end of handhold shall be not more than eight (8) inches from end of car.

Manner of Application: Side-handholds shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half ($\frac{1}{2}$) inch rivets.

HORIZONTAL END-HANDHOLDS:

Number: Eight (8) or more. (Four (4) on each end of car.)

[Tread of end-ladder is an end-handhold.]

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16) inches, preferably twenty-four (24) inches.

A handhold fourteen (14) inches in length may be used where it is impossible to use one sixteen (16) inches in length.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: One (1) near each side on each end of car, not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler, *except* as provided above, when tread of end-ladder is an end-hold. Clearance of outer end of handhold shall be not more than eight (8) inches from side of car.

One (1) near each side of each end of car on face of end-sill or sheathing over end-sill, projecting outward or downward. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

On each end of cars with platform end-sills six (6) or more inches in width, measured from end-post or siding and extending entirely across end of car, there shall be one additional end-handhold not less than twenty-four (24) inches in length, located near center of car, not less than thirty (30) nor more than sixty (60) inches above platform end-sill.

Manner of Application: Horizontal end-handholds shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half ($\frac{1}{2}$) inch rivets.

VERTICAL END-HANDHOLES:

Number: Two (2) on full-width platform end-sill cars, as heretofore described.

Dimensions: Minimum diameter five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, eighteen (18), preferably twenty-four (24), inches.

Minimum clearance two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: One (1) on each end of car opposite ladder, not more than eight (8) inches from side of car; clearance of bottom end of handhold shall be not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler.

Manner of Application: Vertical end-handholds shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half ($\frac{1}{2}$) inch rivets.

UNCOUPLING-LEVERS:

Number: Two (2).

Uncoupling-levers may be either single or double, and of any efficient design.

Dimensions: Handles of uncoupling-levers, *except* those shown on Plate B or of similar designs, shall be not more than six (6) inches from sides of car.

Uncoupling-levers of design shown on Plate B and of similar designs shall conform to the following-prescribed limits:

Handles shall be not more than twelve (12), preferably nine (9), inches from sides of cars. Center lift-arms shall be not less than seven (7) inches long.

Center of eye at end of center lift-arm shall be not more than three and one-half ($3\frac{1}{2}$) inches beyond center of eye of uncoupling-pin of coupler when horn of coupler is against the buffer-block or end-sill. (See Plate B.)

End of handles shall extend not less than four (4) inches below bottom of end-sill or shall be so constructed as to give a minimum clearance of two (2) inches around handle. Minimum drop of handles shall be twelve (12) inches; maximum, fifteen (15) inches over all. (See Plate B.)

Handles of uncoupling-levers of the "rocking" or "push-down" type shall be not less than eighteen (18) inches from top of rail when lock-block has released knuckle, and a suitable stop shall be provided to prevent inside arm from flying up in case of breakage.

Location: One (1) on each end of car.

When single lever is used it shall be placed on left side of end of car.

HOPPER CARS AND HIGH-SIDE GONDOLAS WITH FIXED ENDS

[Cars with sides more than thirty-six (36) inches above the floor are high-side cars.]

HAND-BRAKES:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box or other house cars."

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car to the left of, and not more than twenty-two (22) inches from, center.

Manner of Application: Same as specified for "Box and other house cars."

BRAKE-STEP: Same as specified for "Box and other house cars."

SILL-STEPS: Same as specified for "Box and other house cars."

LADDERS:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars," *except* that top ladder-tread shall be located not more than four (4) inches from top of car.

Location: Same as specified for "Box and other house cars."

Manner of Application: Same as specified for "Box and other house cars."

Side-Handholds: Same as specified for "Box and other house cars."

HORIZONTAL END-HANDHOLDS: Same as specified for "Box and other house cars."

VERTICAL END-HANDHOLDS: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end-sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-wheel, brake-step or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler horn against the buffer-lock or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

DROP-END HIGH-SIDE GONDOLA CARS.**HAND-BRAKES:**

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car to the left of center.

Manner of Application: Same as specified for "Box and other house cars."

SILL-STEPS: Same as specified for "Box and other house cars."

LADDERS:

Number: Two (2).

Dimensions: Same as specified for "Box and other house cars," *except* that top ladder-tread shall be located not more than four (4) inches from top of car.

Location: One (1) on each side, not more than eight (8) inches from right end of car, measured from inside edge of ladder-stile or clearance of ladder-and other house cars."

Manner of Application: Same as specified for "Box and other house cars."

SIDE-HANDHOLDS: Same as specified for "Box and other house cars."

HORIZONTAL END-HANDLES:

Number: Four (4).

Dimensions: Same as specified for "Box and other house cars."

Location: One (1) near each side of each end of car on face of end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

Manner of Application: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-wheel or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

FIXED-END LOW-SIDE GONDOLA AND LOW-SIDE HOPPER CARS.

[Cars with sides thirty-six (36) inches or less above the floor are low-side cars.]

HAND-BRAKES:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car, to the left of and not more than twenty-two (22) inches from center.

Manner of Application: Same as specified for "Box and other house cars."

Brake-Step: Same as specified for "Box and other house cars."

Sill-Steps: Same as specified for "Box and other house cars."

SIDE-HANDHOLDS:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: Horizontal: One (1) near each end on each side of car, not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler, if car construction will permit, but handhold shall not project above top of side. Clearance of outer end of handhold shall be not more than eight (8) inches from end of car.

Manner of Application: Same as specified for "Box and other house cars."

HORIZONTAL END-HANDHOLDS:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: One (1) near each side on each end of car not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler, if car construction will permit. Clearance of outer end of handhold shall be not more than (8) inches from side of car.

One (1) near each side of each end of car on face of end sill, projecting outward or downward. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

Manner of Application: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end-sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-step, brake-wheel or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

DROP-END LOW-SIDE GONDOLA CARS

HAND-BRAKES:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car to the left of center.

Manner of Application: Same as specified for "Box and other house cars," provided that top brake shaft support may be omitted.

SILL-STEPS: Same as specified for "Box and other house cars."

SIDE-HANDHOLDS:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: Horizontal: One (1) near each end on each side of car, not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler, if car construction will permit, but handhold shall not project above top or side. Clearance of outer end of handhold shall be not more than eight (8) inches from end of car.

Manner of Application: Same as specified for "Box and other house cars."

END-HANDHOLDS:

Number: Four (4).

Dimensions: Same as specified for "Box and other house cars."

LOCATION: Horizontal: One (1) near each side of each end of car on face of end sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

Manner of Application: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-wheel or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

FLAT CARS

[Cars with sides twelve (12) inches or less above the floor may be equipped the same as flat cars.]

HAND-BRAKES:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on the end of car to the left of center, or on side of car not more than thirty-six (36) inches from right-hand end thereof.

Manner of Application: Same as specified for "Box and other house cars."

SILL-STEP: Same as specified for "Box and other house cars."

SIDE-HANDHOLDS:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: Horizontal: One (1) on face of each side-sill near each end. Clearance of outer end of handhold shall be not more than twelve (12) inches from end of car.

Manner of Application: Same as specified for "Box and other house cars."

END-HANDHOLDS:

Number: Four (4).

Dimensions: Same as specified for "Box and other house cars."

Location: Horizontal: One (1) near each side of each end of car on face of end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

Manner of Application: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

TANK-CARS WITH SIDE-PLATFORMS

HAND-BRAKES:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car to the left of center.

Manner of Application: Same as specified for "Box and other house cars."

SILL-STEPS: Same as specified for "Box and other house cars."

SIDE-HANDHOLDS:

Number: Four (4) or more.

Dimensions: Same as specified for "Box and other house cars."

Location: Horizontal: One (1) on face of each side-sill near each end. Clearance of outer end of handhold shall be not more than twelve (12) inches from end of car.

If side safety-railings are attached to tank or tank-bands, four (4) additional vertical handholds shall be applied, one (1) as nearly as possible over each sill-step and securely fastened to tank or tank-band.

Manner of Application: Same as specified for "Box and other house cars."

END-HANDHOLDS:

Number: Four (4).

Dimensions: Same as specified for "Box and other house cars."

Location: Horizontal: One (1) near each side of each end of car on face of end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

Manner of Application: Same as specified for "Box and other house cars."

TANK-HEAD HANDHOLDS:

Number: Two (2). [*Not required if safety-railing runs around ends of tank.*]

Dimensions: Minimum diameter five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel. Minimum clearance two (2), preferably two and one-half ($2\frac{1}{2}$), inches. Clear length of handholds shall extend to within six (6) inches of outer diameter of tank at point of application.

Location: Horizontal: One (1) across each head of tank not less than thirty (30) nor more than sixty (60) inches above platform.

Manner of Application: Tank-head handholds shall be securely fastened.

SAFETY-RAILINGS:

Number: One (1) continuous safety-railing running around sides and ends of tank, securely fastened to tank or tank-bands at ends and sides of tank; or two (2) running full length of tank at sides of car supported by posts.

Dimensions: Not less than three-fourth ($\frac{3}{4}$) of an inch, iron.

Location: Running full length of tank either at side supported by posts or securely fastened to tank or tank-bands, not less than thirty (30) nor more than sixty (60) inches above platform.

Manner of Application: Safety-railings shall be securely fastened to tank-body, tank-bands or posts.

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCES

No part of car above end-sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-shaft brackets, brake-wheel or uncoupling lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle

when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

TANK CARS WITHOUT SIDE-SILLS AND TANK CARS WITH SHORT SIDE-SILLS AND END-PLATFORMS

HAND-BRAKES:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft shall be located on end of car to the left of center.

Manner of Application: Same as specified for "Box and other house cars."

RUNNING-BOARDS:

Number: One (1) continuous running-board around sides and ends; or two (2) running full length of tank, one (1) on each side.

Dimensions: Minimum width on sides, ten (10) inches.

Minimum with on ends, six (6) inches.

Location: Continuous around sides and ends of cars. On tank cars having end platforms extending to bolsters, running-boards shall extend from center to center of bolsters, one (1) on each side.

Manner of Application: If side running-boards are applied below center of tank, outside edge of running-boards shall extend not less than seven (7) inches beyond bulge of tank.

The running-boards at ends of car shall be not less than six (6) inches from a point vertically above the inside face of knuckle when closed with

coupler-horn against the buffer-block, end-sill or back-stop.

Running-boards shall be securely fastened to tank or tank-bands.

SILL-STEPS:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: One (1) near each end on each side under side-handhold.

Outside edge of tread of step shall be not more than four (4) inches inside of face of side of car, preferably flush with side of car.

Tread shall be not more than twenty-four (24), preferably not more than twenty-two (22), inches above the top of rail.

Manner of Application: Same as specified for "Box and other house cars."

LADDERS: [*If running-boards are so located as to make ladders necessary.*]

Number: Two (2) on cars with continuous running-boards.

Four (4) on cars with side running-boards.

Dimensions: Minimum clear length of tread, ten (10) inches.

Maximum spacing of treads, nineteen (19) inches.

Hard-wood treads, minimum dimensions, one and one-half ($1\frac{1}{2}$) by two (2) inches.

Wrought iron or steel treads, minimum diameter, five-eighths ($\frac{5}{8}$) of an inch.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: On cars with continuous running-boards, one (1) at right end of each side.

On cars with side running-boards, one (1) at each end of each running-board.

Manner of Application: Ladders shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts or rivets.

SIDE-HANDHOLDS:

Number: Four (4) or more.

Dimensions: Same as specified for "Box and other house cars."

Location: Horizontal: One (1) on face of each side-sill near each end on tank cars with short side-sills or one (1) attached to top of running-board projecting outward above sill-steps or ladders on tank cars without side-sills. Clearance of outer end of handhold shall be not more than twelve (12) inches from end of car.

If side safety-railings are attached to tank or tank-bands four (4) additional vertical handholds shall be applied, one (1) as nearly as possible over each sill-step and securely fastened to tank or tank-band.

Manner of Application: Same as specified for "Box and other house cars."

END-HANDHOLDS:

Number: Four (4).

Dimensions: Same as specified for "Box and other house cars."

Location: Horizontal: One (1) near each side of each end of car on face of end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

Manner of Application: Same as specified for "Box and other house cars."

TANK-HEAD HANDHOLDS:

Number: Two (2). [*Not required if safety-railing runs around ends of tank.*]

Dimensions: Minimum diameter five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clearance two (2), preferably two and one-half ($2\frac{1}{2}$), inches

Location: Horizontal: One (1) across each head of tank not less than thirty (30) nor more than sixty (60) inches above platform on running-board. Clear length of handholds shall extend to within

six (6) inches of outer diameter of tank at point of application.

Manner of Application: Tank-head handholds shall be securely fastened.

SAFETY-RAILINGS:

Number: One (1) running around sides and ends of tank or two (2) running full length of tank.

Dimensions: Minimum diameter, seven-eighths ($\frac{7}{8}$) of an inch, wrought iron or steel.

Minimum clearance, two and one-half ($2\frac{1}{2}$) inches.

Location: Running full length of tank, not less than thirty (30) nor more than sixty (60) inches above platform or running-board.

Manner of Application: Safety-railings shall be securely fastened to tank or tank-bands and secured against end shifting.

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

END-LADDER CLEARANCE:

No part of car above end-sills within thirty (30) inches from side of car, *except* buffer-block, brake-shaft, brake-shaft brackets, brake-wheel, running-boards or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill, and no other part of end of car or fixtures on same, above end-sills, other than exceptions herein noted, shall extend beyond the outer face of buffer-block.

TANK CARS WITHOUT END-SILLS

HAND-BRAKES:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion. The brake-shaft shall be located on end of car to the left of center.

Manner of Application: Same as specified for "Box and other house cars."

BRAKE-STEP: Same as specified for "Box and other house cars."

RUNNING-BOARDS:

Number: One (1).

Dimensions: Minimum width on sides, ten (10) inches.

Minimum width on ends, six (6) inches.

Location: Continuous around sides and ends of tank.

Manner of Application: If running-boards are applied below center of tank, outside edge of running-boards shall extend not less than seven (7) inches beyond bulge of tank.

Running-boards at ends of car shall be not less than six (6) inches from a point vertically above the inside face of knuckle when closed with coupler-horn against the buffer-block, end-sill or back-stop.

Running-boards shall be securely fastened to tank or tank-bands.

SILL-STEPS:

Number: Four (4). [*If tank has high running-boards, making ladders necessary, sill-steps must meet ladder requirements.*]

Dimensions: Same as specified for "Box and other house cars."

Location: One (1) near each on each side, flush with outside edge of running-board as near end of car as practicable.

Tread not more than twenty-four (24), preferably not more than twenty-two (22), inches above the top of rail.

Manner of Application: Steps exceeding eighteen (18) inches in depths shall have an additional tread and be laterally braced.

Sill-steps shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside (when possible) and riveted over, or with one-half ($\frac{1}{2}$) inch rivets.

SIDE-HANDHOLES:

Number: Four (4) or more.

Dimensions: Same as specified for "Box and other house cars."

Location: Horizontal: One (1) near each end on each side of car over sill-step, on running-board, not more than two (2) inches back from outside edge of running-board, projecting downward or outward.

Where such side-handholds are more than eighteen (18) inches from end of car, an additional handhold must be placed near each end on each side not more than thirty (30) inches above center line of coupler.

Clearance of outer end of handhold shall be not more than twelve (12) inches from end of car.

If safety-railings are on tank, four (4) additional vertical handholds shall be applied, one (1) over each sill-step on tank.

Manner of Application: Same as specified for "Box and other house cars."

END-HANDHOLDS:

Number: Four (4).

Dimensions: Same as specified for "Box and other house cars."

Location: Horizontal: One (1) near each side on each end of car on running-board, not more than two (2) inches back from edge of running-board projecting downward or outward, or on end of tank not more than thirty (30) inches above center line of coupler.

Manner of Application: Same as specified for "Box and other house cars."

SAFETY-RAILINGS:

Number: One (1).

Dimensions: Minimum diameter seven-eighths ($\frac{7}{8}$) of an inch, wrought iron or steel.

Minimum clearance two and one-half ($2\frac{1}{2}$) inches.

Location: Safety-railings shall be continuous around sides and ends of car, not less than thirty (30) nor more than sixty (60) inches above running-board.

Manner of Application: Safety-railings shall be securely fastened to tank or tank-bands, and secured against end shifting.

UNCOUPLING-LEVERS:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars," *except* that minimum length of uncoupling-lever shall be forty-two (42) inches, measured from center line of end of car to handle of lever.

Location: Same as specified for "Box and other house cars," *except* that uncoupling-lever shall be not more than thirty (30) inches above center line of coupler.

END-LADDER CLEARANCE:

No part of car above buffer-block within thirty (30) inches from side of car, *except* brake-shaft, brake-shaft brackets, brake-wheel or uncoupling-lever shall extend to within twelve (12) inches of a vertical plane parallel with end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or back-stop, and no other part of end of car or fixtures on same, above buffer-block, other than exceptions herein noted, shall extend beyond the face of buffer-block.

CABOOSE CARS WITH PLATFORMS

HAND-BRAKES:

Number: Each caboose car shall be equipped with an efficient hand-brake which shall operate in harmony with the power-brake thereon.

The hand-brake may be of any efficient design, but must provide the same degree of safety as the design shown on Plate A.

Dimensions: Same as specified for "Box and other house cars."

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft on caboose cars with platforms shall be located on platform to the left of center.

Manner of Application: Same as specified for "Box and other house cars."

RUNNING-BOARDS:

Number: One (1) longitudinal running-board.

Dimensions: Same as specified for "Box and other house cars."

Location: Full length of car, center of roof. [*On caboose cars with cupolas, longitudinal running-boards shall extend from cupola to ends of roof.*]

Outside-metal-roof cars shall have latitudinal extensions leading to ladder locations.

Manner of Application: Same as specified for "Box and other house cars."

LADDERS:

Number: Two (2).

Dimensions: None specified.

Location: One (1) on each end.

Manner of Application: Same as specified for "Box and other house cars."

ROOF-HANDHOLDS:

Number: One (1) over each ladder.

Where stiles of ladders extend twelve (12) inches or more above roof, no other roof-handholds are required.

Dimensions: Same as specified for "Box and other house cars."

Location: On roof of caboose, in line with and running parallel to treads of ladder, not less than eight (8) nor more than fifteen (15) inches from edge of roof.

Manner of Application: Same as specified for "Box and other house cars."

CUPOLA-HANDHOLDS:

Number: One (1) or more.

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clearance two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: One (1) continuous handhold extending around top of cupola not more than three (3) inches from edge of cupola-roof.

Four (4) right-angle handholds, one (1) at each corner, not less than sixteen (16) inches in clear length from point of angle, may take the place of the one (1) continuous handhold specified, if locations coincide.

Manner of Application: Cupola-handholds shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside and riveted over or with not less than one-half ($\frac{1}{2}$) inch rivets.

SIDE-HANDHOLDS:

Number: Four (4).

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, thirty-six (36) inches.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: One (1) near each end on each side of car, curving downward toward center of car from a point not less than thirty (30) inches above platform to a point not more than eight (8) inches

from bottom of car. Top end of handhold shall be not more than eight (8) inches from outside face of end sheathing.

Manner of Application: Same as specified for "Box and other house cars."

END-HANDHOLDS:

Number: Four (4).

Dimensions: Same as specified for "Box and other house cars."

Location: Horizontal: One (1) near each side on each end of car on face of platform end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from end of platform end-sill.

Manner of Application: Same as specified for "Box and other house cars."

END-PLATFORM-HANDHOLDS:

Number: Four (4).

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: One (1) right-angle handhold on each side of each end extending horizontally from door-post to corner of car at approximate height of platform-rail, then downward to within twelve (12) inches of bottom of car.

Manner of Application: Handholds shall be securely fastened with bolts, screws, or rivets.

CABOOSE PLATFORM-STEPS:

Safe and suitable box steps leading to caboose platforms shall be provided at each corner of caboose.

Lower tread of step shall be not more than twenty-four (24) inches above top of rail.

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

CABOOSE CARS WITHOUT PLATFORMS

HAND-BRAKES:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other cars."

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

The brake-shaft on caboose cars without platforms shall be located on end of car to the left of center.

Manner of Application: Same as specified for "Box and other house cars."

BRAKE-STEP: Same as specified for "Box and other house cars."

RUNNING-BOARDS:

Number: Same as specified for "Box and other house cars."

Dimensions: "Same as specified for "Box and other house cars."

Location: Full length of car, center of roof. [*On caboose cars with cupolas, longitudinal running-boards shall extend from cupola to ends of roof.*]

Outside-metal-roof cars shall have latitudinal extensions leading to ladder locations.

Manner of Application: Same as specified for "Box and other house cars."

SILL-STEPS: Same as specified for "Box and other house cars."

SIDE-DOOR STEPS:

Number: Two (2) [*if caboose has side-doors*].

Dimensions: Minimum length, five (5) feet.

Minimum width, six (6) inches.

Minimum thickness of tread, one and one-half (1½) inches.

Minimum height of back-stop, three (3) inches.

Maximum height from top of rail to top of tread, twenty-four (24) inches.

SIDE-DOOR HANDHOLDS:

Number: Four (4): Two (2) curved, two (2) straight.

Dimensions: Minimum diameter five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clearance two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: One (1) curved handhold, from a point at side of each door opposite ladder, not less than thirty-six (36) inches above bottom of car, curving away from door downward to a point not more than six (6) inches above bottom of car.

One (1) vertical handhold at ladder side of each door from a point not less than thirty-six (36) inches above bottom of car to a point not more than six (6) inches above level of bottom door.

Manner of Application: Side-door handholds shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half ($\frac{1}{2}$) inch rivets.

HORIZONTAL END-HANDHOLDS:

Number: Same as specified for "Box and other house cars."

Dimensions: Same as specified for "Box and other house cars."

Location: Same as specified for "Box and other house cars," *except* that one (1) additional end-handhold shall be on each end of cars with platform end-sills as heretofore described, unless car has door in center of end. Said handhold shall be not less than twenty-four (24) inches in length, located near center of car, not less than thirty (30) nor more than sixty (60) inches above platform end-sill.

Manner of Application: Same as specified for "Box and other house cars."

VERTICAL END-HANDHOLDS: Same as specified for "Box and other house cars."

UNCOUPLING-LEVERS: Same as specified for "Box and other house cars."

PASSENGER-TRAIN CARS WITH WIDE VESTIBULES

HAND-BRAKES:

Number: Each passenger-train car shall be equipped with an efficient hand-brake, which shall operate in harmony with the power-brake thereon.

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

SIDE-HANDHOLDS:

Number: Eight (8).

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, metal.

Minimum clear length, sixteen (16) inches.

Minimum clearance, one and one-fourth ($1\frac{1}{4}$), preferably one and one-half ($1\frac{1}{2}$), inches.

Location: Vertical: One (1) on each vestibule door post.

Manner of Application: Side-handholds shall be securely fastened with bolts, rivets or screws.

END-HANDHOLDS:

Number: Four (4).

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16) inches.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Handholds shall be flush with or project not more than one (1) inch beyond vestibule face.

Location: Horizontal: One (1) near each side on each end projecting downward from face of vestibule end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side car.

Manner of Application: End-handholds shall be securely fastened with bolts or rivets.

When marker-sockets or brackets are located so that they can not be conveniently reached from platforms, suitable steps and handholds shall be provided for men to reach such sockets or brackets.

UNCOUPLING-LEVERS:

Uncoupling attachments shall be applied so they can be operated by a person standing on the ground.

Minimum length of ground uncoupling attachment, forty-two (42) inches, measured from center line of end of car to handle of attachment.

On passenger-train cars used in freight or mixed-train service, the uncoupling attachments shall be so applied that the coupler can be operated from left side of car.

PASSENGER-TRAIN CARS WITH OPEN END-PLATFORMS**HAND-BRAKES:**

Number: Each passenger-train car shall be equipped with an efficient hand-brake, which shall operate in harmony with the power-brake thereon.

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

END-HANDHOLDS:

Number: Four (4).

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16) inches.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Handholds shall be flush with or project not more than one (1) inch beyond face of end-sill.

Location: Horizontal: One (1) near each side of each end on face of platform end-sill, projecting downward. Clearance of outer end of handhold shall be not more than sixteen (16) inches from end of end-sill.

Manner of Application: End-handholds shall be securely fastened with bolts or rivets.

END PLATFORM-HANDHOLDS:

Number: Four (4). [*Cars equipped with safety-gates do not require end platform-handholds.*]

Dimensions: Minimum clearance two (2), preferably two and one-half ($2\frac{1}{2}$), inches, metal.

Location: Horizontal from or near door-post to a point not more than twelve (12) inches from corner of car, then approximately vertical to a point not more than six (6) inches from top of platform. Horizontal portion shall be not less than twenty-four (24) inches in length nor more than forty (40) inches above platform.

Manner of Application: End platform-handholds shall be securely fastened with bolts, rivets, or screws.

UNCOUPLING-LEVERS:

Uncoupling attachments shall be applied so they can be operated by a person standing on the ground.

Minimum length of ground uncoupling attachment, forty-two (42) inches, measured from center of end of car to handle of attachment.

On passenger-train cars used in freight or mixed-train service the uncoupling attachments shall be so applied that the coupler can be operated from left side of car.

PASSENGER-TRAIN CARS WITHOUT END-PLATFORMS

HAND-BRAKES:

Number: Each passenger-train car shall be equipped with an efficient hand-brake which shall operate in harmony with the power-brake thereon.

Location: Each hand-brake shall be so located that it can be safely operated while car is in motion.

SILL-STEPS:

Number: Four (4).

Dimensions: Minimum length of tread ten (10), preferably twelve (12), inches.

Minimum cross-sectional area one-half ($\frac{1}{2}$) by one and one-half ($1\frac{1}{2}$) inches or equivalent, wrought iron or steel.

Minimum clear depth eight (8) inches.

Location: One (1) near each end on each side not more than twenty-four (24) inches from corner of car to center of tread of sill-step.

Outside edge of tread of step shall be not more than two (2) inches inside of face of side of car.

Tread shall be not more than twenty-four (24), preferably not more than twenty-two (22), inches above the top of rail.

Manner of Application: Steps exceeding eighteen (18) inches in depth shall have an additional tread and be laterally braced.

Sill-steps shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half ($\frac{1}{2}$) inch rivets.

SIDE-HANDHOLDS:

Number: Four (4).

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16), preferably twenty-four (24), inches.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: Horizontal or vertical: One (1) near each end on each side of car over sill-step.

If horizontal, not less than twenty-four (24) nor more than thirty (30) inches above center line of coupler.

If vertical, lower end not less than eighteen (18) nor more than twenty-four (24) inches above center line of coupler.

Manner of Application: Side-handholds shall be securely fastened with bolts, rivets or screws.

END-HANDHOLDS:

Number: Four (4).

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16) inches.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: Horizontal: One (1) near each side on each end projecting downward from face of end-sill or sheathing. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of car.

Manner of Application: Handholds shall be flush with or project not more than one (1) inch beyond face of end-sill.

End-handholds shall be securely fastened with bolts or rivets.

When marker sockets or brackets are located so that they can not be conveniently reached from platforms, suitable steps and handholds shall be provided for men to reach such sockets or brackets.

END-HANDRAILS: [*On cars with projecting end-sills.*]

Number: Four (4).

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: One (1) on each side of each end, extending horizontally from door-post or vestibule-frame to a point not more than six (6) inches from corner of car, then approximately vertical to a point not more than six (6) inches from top of platform end-sill; horizontal portion shall be not less than thirty (30) nor more than (60) inches above platform end-sill.

Manner of Application: End hand-rails shall be securely fastened with bolts, rivets or screws.

SIDE-DOOR STEPS:

Number: One (1) under each door.

Dimensions: Minimum length of tread, ten (10), preferably twelve (12), inches.

Minimum cross-sectional area, one-half ($\frac{1}{2}$) by one one-half ($1\frac{1}{2}$) inches or equivalent, wrought iron or steel.

Minimum clear depth, eight (8) inches.

Location: Outside edge of tread of step not more than two (2) inches inside of face of side of car.

Tread not more than twenty-four (24), preferably not more than twenty-two (22), inches above the top of rail.

Manner of Application: Steps exceeding eighteen (18) inches in depth shall have an additional tread and be laterally braced.

Side-door steps shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half ($\frac{1}{2}$) inch rivets.

A vertical handhold not less than twenty-four (24) inches in clear length shall be applied above each side-door step on door-post.

UNCOUPLING-LEVERS:

Uncoupling attachments shall be applied so they can be operated by a person standing on the ground. Minimum length of ground uncoupling attachment, forty-two (42) inches, measured from center line of end of car to handle attachment.

On passenger-train cars used in freight or mixed-train service, the uncoupling attachment shall be so applied that the coupler can be operated from the left side of car.

STEAM LOCOMOTIVES USED IN ROAD SERVICE

TENDER SILL-STEPS:

Number: Four (4) on tender.

Dimensions: Bottom tread not less than eight (8) by twelve (12) inches, metal.

[*May have wooden treads.*]

If stirrup-steps are used, clear length of tread shall be not less than ten (10), preferably twelve (12), inches.

Location: One (1) near each corner of tender on sides.

Manner of Application: Tender sill-steps shall be securely fastened with bolts or rivets.

PILOT SILL-STEPS:

Number: Two (2).

Dimensions: Tread not less than eight (8) inches in width by ten (10) inches in length, metal.

[May have wooden treads.]

Location: One (1) on or near each end of buffer-beam outside of rail and not more than sixteen (16) inches above rail.

Manner of Application: Pilot sill-steps shall be securely fastened with bolts or rivets.

PILOT-BEAM HANDHOLDS:

Number: Two (2).

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, fourteen (14), preferably sixteen (16), inches.

Minimum clearance, two and one-half ($2\frac{1}{2}$) inches.

Location: One (1) on each end of buffer-beam.

[If uncoupling-lever extends across front end of locomotive to within eight (8) inches of end of buffer-beam, and is seven-eighths ($\frac{7}{8}$) of an inch or more in diameter, securely fastened, with a diameter, securely fastened, with a clearance of two and one half ($2\frac{1}{2}$) inches, it is a handhold.]

Manner of Application: Pilot-beam handholds shall be securely fastened with bolts or rivets.

SIDE-HANDHOLDS:

Number: Six (6).

Dimensions: Minimum diameter, if horizontal, five-eighths ($\frac{5}{8}$) of an inch, if vertical, seven-eighths ($\frac{7}{8}$) of an inch, wrought iron or steel.

Horizontal, minimum clear length, sixteen (16) inches.

Vertical, clear length equal to approximate height of tank.

Minimum clearance two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: Horizontal or vertical: If vertical, one (1) on each side of tender within six (6) inches of rear or on corner, if horizontal, same as specified for "Box and other house cars."

One (1) on each side of tender near gangway; one (1) on each side of locomotive at gangway; applied vertically.

Manner of Application: Side-handholds shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts or rivets.

REAR-END HANDHOLDS:

Number: Two (2).

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, fourteen (14) inches.

Minimum clearance two (2), preferably two and one-half ($2\frac{1}{2}$) inches.

Location: Horizontal: One (1) near each side of rear end of tender on face of end-sill. Clearance of outer end of handhold shall be not more than sixteen (16) inches from side of tender.

Manner of Application: Rear-end handholds shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts or rivets.

UNCOUPLING-LEVERS:

Number: Two (2) double levers, operative from either side.

Dimensions: Rear-end levers shall extend across end tender with handles not more than twelve (12), preferably nine (9), inches from side of tender with a guard bent on handle to give not less than two (2) inches clearance around handle.

Location: One (1) on rear end of tender and one (1) on front end of locomotive.

Handles of front-end levers shall be not more than twelve (12), preferably nine (9), inches from ends of buffer-beam, and shall be so constructed as to give a minimum clearance of two (2) inches around handle.

Manner of application: Uncoupling-levers shall be securely fastened with bolts or rivets.

COUPLERS: Locomotives shall be equipped with auto-couplers at rear of tender and front of locomotive.

STEAM LOCOMOTIVES USED IN SWITCHING SERVICE

FOOTBOARDS:

Number: Two (2) or more.

Dimensions: Minimum width of tread, ten (10) inches, wood.

Minimum thickness of tread, one and one-half ($1\frac{1}{2}$), preferably two (2) inches.

Minimum height of back-stop, four (4) inches above tread.

Height from top of rail to top of tread, not more than twelve (12) nor less than nine (9) inches.

Location: Ends or sides.

If on ends, they shall extend not less than eighteen (18) inches outside of gauge of straight track, and shall be not more than twelve (12) inches shorter than buffer-beam at each end.

Manner of Application: End footboards may be constructed in two (2) sections, *provided* that practically all space on each side of coupler is filled; each section shall be not less than three (3) feet in length.

Footboards shall be securely bolted to two (2) one (1) by four (4) inches metal brackets, *provided* footboard is not cut or notched at any point.

If footboard is cut or notched or in two (2) sections, not less than four (4) one (1) by three (3) inches metal brackets shall be used, two (2) located on each side of coupler. Each bracket shall be securely bolted to buffer-beam, end-sill or tank-frame by not less than two (2) seven-eighths ($\frac{7}{8}$) inch bolts.

If side footboards are used, a substantial handhold or rail shall be applied not less than thirty (30)

inches nor more than sixty (60) inches above tread of footboard.

SILL-STEPS:

Number: Two (2) or more.

Dimensions: Lower tread of step shall be not less than eight (8) inches by twelve (12) inches, metal. *[May have wooden treads.]*

If stirrup-steps are used, clear length of tread shall be not less than ten (10), preferably twelve (12), inches.

Location: One (1) or more on each side at gangway secured to locomotive or tender.

Manner of Application: Sill-steps shall be securely fastened with bolts or rivets.

END-HANDHOLDS:

Number: Two (2).

Dimensions: Minimum diameter, one (1) inch, wrought iron or steel.

Minimum clearance, four (4) inches, *except* at coupler casting or braces, when minimum clearance shall be two (2) inches.

Location: One (1) on pilot buffer-beam; one (1) on rear end of tender, extending across front end of locomotive and rear end of tender. Ends of handholds shall be not more than six (6) inches from ends of buffer-beam or end-sill, securely fastened at ends.

Manner of Application: End-handholds shall be securely fastened with bolts or rivets.

SIDE-HANDHOLDS:

Number: Four (4).

Dimensions: Minimum diameter, seven-eighths ($\frac{7}{8}$) of an inch, wrought iron or steel.

Clear length equal to approximate height of tank.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$), inches.

Location: Vertical. One (1) on each side of tender near front corner; one (1) on each side of locomotive at gangway.

Manner of Application: Side-handholds shall be securely fastened with bolts and rivets.

UNCOUPLING-LEVERS:

Number: Two (2) double levers, operative from either side.

Dimensions: Handles of front-end levers shall be not more than twelve (12), preferably nine (9), inches from ends of buffer-beam, and shall be so constructed as to give a minimum clearance of two (2) inches around handle.

Rear-end levers shall extend across end of tender with handles not more than twelve (12), preferably nine (9), inches from side of tender, with a guard bent on handle to give not less than two (2) inches clearance around handle.

Location: One (1) on rear end of tender and one (1) on front end of locomotive.

HANDRAILS AND STEPS FOR HEADLIGHTS:

Switching-locomotives with sloping tenders with manhole or headlight located on sloping portion of tender shall be equipped with secure steps and handrail or with platform and handrail leading to such manhole or headlight.

END-LADDER CLEARANCE:

No part of locomotive or tender *except* draft-rigging, coupler and attachments, safety-chains, buffer-block, foot-board, brake-pipe, signal-pipe, steam-heat pipe or arms of uncoupling-lever shall extend to within fourteen (14) inches of a vertical plane passing through the inside face of knuckle when closed with horn of coupler against buffer-block or end-sill.

COUPLERS: Locomotives shall be equipped with automatic couplers at rear of tender and front of locomotive.

SPECIFICATIONS COMMON TO ALL STEAM LOCOMOTIVES

HAND-BRAKES:

Hand-brakes will not be required on locomotives nor on tenders when attached to locomotives.

If tenders are detached from locomotives and used in special service, they shall be equipped with efficient hand-brakes.

RUNNING-BOARDS:

Number: Two (2).

Dimensions: Not less than ten (10) inches wide. If of wood, not less than one and one-half ($1\frac{1}{2}$) inches in thickness; if of metal, not less than three-sixteenths ($\frac{3}{16}$) of an inch, properly supported.

Location: One (1) on each side of boiler extending from cab to front end near pilot-beam. [*Running-boards may be in sections. Flat-top steam-chests may form section of running-board.*]

Manner of Application: Running-boards shall be securely fastened with bolts, rivets or studs.

Locomotives having Wootten type boilers with cab located on top of boiler more than (12) inches forward from boiler-head shall have suitable running-boards running from cab to rear of locomotive, with handrailings not less than twenty (20) nor more than forty-eight (48) inches above outside edge of running-boards, securely fastened with bolts, rivets or studs.

HANDRAILS:

Number: Two (2) or more.

Dimensions: Not less than one (1) inch in diameter, wrought iron or steel.

Location: One on each side of boiler extending from near cab to near front end of boiler, and extending across front end of boiler, not less than twenty-four (24) nor more than sixty-six (66) inches above running-board.

Manner of Application: Handrails shall be securely fastened to boiler.

TENDER OF VANDERBILT TYPE:

Tenders known as the Vanderbilt type shall be equipped with running-boards; one (1) on each side of tender not less than ten (10) inches in width and one (1) on top of tender not less than forty-eight (48) inches in width, extending from coal space to rear of tender.

There shall be a handrail on each side of top running-board, extending from coal space to rear of tank, not less than one (1) inch in diameter and not less than twenty (20) inches in height above running-board from coal space to manshole.

There shall be a handrail extending from coal space to within twelve (12) inches of rear of tank, attached to each side of tank above side running-board, not less than (30) nor more than sixty-six (66) inches above running board.

There shall be one (1) vertical end handhold on each side of Vanderbilt type of tender, located within eight (8) inches of rear of tank extending from within eight (8) inches of top of end-sill to within eight (8) inches of side handrail. Post supporting rear end of side running-board if not more than two (2) inches in diameter and properly located, may form section of handhold.

An additional horizontal end handhold shall be applied on rear end of all Vanderbilt type of tenders which are not equipped with vestibules. Handhold to be located not less than thirty (30) nor more than sixty-six inches above top of end-sill. Clear length of handhold to be not less than forty-eight (48) inches.

Ladders shall be applied at forward ends of side running-boards.

HANDRAILS AND STEPS FOR HEADLIGHTS:

Locomotives having headlights which can not be safely and conveniently reached from pilot-beam or steam-chests shall be equipped with secure

handrails and steps suitable for the use of men in getting to and from such headlights.

A suitable metal end or side-ladder shall be applied to all tanks more than forty-eight (48) inches in height, measured from the top of end-sill, and securely fastened with bolts or rivets.

COUPLERS: Locomotives shall be equipped with automatic couplers at rear of tender and front of locomotive.

Cars of construction not covered specifically in the foregoing sections, relative to handholds, sill-steps, ladders, hand-brakes and running boards may be considered as of special construction, but shall have, as nearly as possible, the same complement of handholds, sill-steps, ladders, hand-brakes and running-boards as are required for cars of the nearest approximate type.

“RIGHT” or “LEFT” refers to side of person when facing end or side of car from ground.

To provide for the usual inaccuracies of manufacturing and for wear, where sizes of metal are specified, a total variation of five (5) per cent below size given is permitted.

And it is further ordered, That a copy of this order be at once served on all common carriers, subject to the provisions of said act, in a sealed envelope by registered mail.

By the Commission:

EDWARD A. MOSELEY, *Secretary.*

A true copy.

EDWARD A. MOSELEY,
Secretary.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1916.

No. 637.

ILLINOIS CENTRAL RAILROAD CO., ET AL.,
Plaintiffs in Error.

vs.

GEORGE R. WILLIAMS,
Defendant in Error.



MOTIONS TO DISMISS OR AFFIRM.

Now comes the Defendant in Error, George R. Williams, by his attorneys, and moves the Court to dismiss the writ of error in this case to the judgment of the Supreme Court of the State of Mississippi, for want of jurisdiction, because,

First. The Federal questions presented are wholly formal, and so absolutely devoid of merit as to be frivolous, and have been so explicitly foreclosed by the decisions of this Court as to leave no room for real controversy.

Second. If the writ of error shall not be dismissed for want of jurisdiction, Defendant in Error moves that the said judgment of the Supreme Court of the State of Mississippi be affirmed on the ground that although, in the opinion of this Court, the record may show that this Court has jurisdiction, it is manifest that the said writ of error was taken for delay only, and that the questions on which the decision of the cause here depends are so frivolous as not to need further argument. (Rule 6, subdivision 5.)

M. F. HARRINGTON,
WILLIAM H. WATKINS,
*Attorneys for Defendant in Error
for the Purposes of These Motions.*

NOTICE OF MOTIONS.

To above named Plaintiffs in Error, and to Robert B. Mayes, Jackson, Mississippi, Attorney of Record for Plaintiffs in Error:

You, and each of you, are hereby notified that the Defendant in Error, in the above cause, will, on Monday October 2nd, 1916, on the meeting of the Supreme Court of the United States on that day, or as soon thereafter as counsel can be heard, submit for consideration of the said Court, the foregoing motions, and each of them, and the brief thereon, including portions of the record hereto attached, and served upon you herewith.

M. F. HARRINGTON,
WILLIAM H. WATKINS,
*Attorneys for Defendant in Error
for the Purposes of These Motions.*

STATEMENT OF CASE.

This case is one for damages for personal injuries sustained by the Defendant in Error while in the employ of the Plaintiffs in Error, in Memphis, Tennessee, on March 15th, 1913.

On or about the 7th day of January, 1913, George R. Williams, the Defendant in Error in this case, who was then a young man of twenty-four years of age, entered the joint service of the Illinois Central Railroad Company and the Yazoo & Mississippi Valley Railroad Company as switchman in their yards in the City of Memphis, Tennessee. Williams was reared near Atchison, Nebraska, and prior to the injury for which suit was brought in this case was in excellent health.

Upon the 15th day of March, 1913, the Plaintiffs in Error assigned him to duties as night switchman in the south yards in Memphis, Tennessee. Both of said Plaintiffs in Error were then and at all times had been engaged in interstate commerce, the Illinois Central Railroad operating a line of railroad from Chicago, in the State of Illinois, to New Orleans, in the State of Louisiana, operating through the States of Illinois, Kentucky, Tennessee, Mississippi, and Louisiana; and the Yazoo & Mississippi Valley Railroad operating a line of railroad from Memphis, in the State of Tennessee to New Orleans, in the State of Louisiana, in and through the States of Tennessee, Mississippi, and Louisiana. The Plaintiffs in Error in their south yards in Memphis, Tennessee, had and maintained certain switch tracks upon which cars of various kinds were stored. The tracks were numbered 1 to 21, each inclusive, numbering from the east to the west. A plat of these tracks was made Exhibit "A" to the testimony of Defendant in Error, and a copy thereof will be found with the record hereto attached. Williams was assigned upon March 15th, 1913, to work with an engine crew, the duties of the crew being that of kicking cars into the various switch tracks numbered 1 to 21 hereinbefore referred to. These various tracks

led into what is known as the lead, and the duties assigned to him and the crew to which he belonged upon the night of March 15th, 1913, were to fill the tracks in question with cars as became necessary, and for that purpose it became the duty of Williams to make fast the cars at the south end of the switch or track. Unless this was done, when cars were kicked in on the switches they would run out on the lead and interfere with the movements of cars beyond the track. The switches and the lead were in constant use at the time in interstate commerce. When Williams and the crew with which he was engaged started to work they began on track No. 21, being the westmost track. There were standing at the south end of this track near the lead three gondolas and a box car for the purpose of making the cars on the end of the switch fast and to keep them from pushing out on to the lead, thereby interfering with the movements of cars passing over and along said lead, it became Williams' duty to go to the south end of track No. 21 and adjust the brake on the car so that the car would not move further south when other cars were kicked against it. For that purpose he walked south between tracks 20 and 21, went up the ladder on the car in question, shown to have been a car of the Illinois Central Railroad Company, No. 121704, then in use by the Plaintiffs in Error. When he got to the top of the car, he caught hold of the hand-hold or grab-iron on the top thereof, which, being defective and loose, gave way and he fell to the ground a distance of eighteen to twenty feet. He fell upon his back and suffered serious and permanent injuries from which he has never recovered and will never recover. He has never been able to walk without the use of braces, a cane or crutch since the day of his injury, and, according to the testimony in the case, is permanently injured.

See testimony—

John McGinnis, Printed Record, page 16;
Geo. R. Williams, Printed Record, page 33;
C. T. Earle, Printed Record, page 67.

He instituted suit in the Circuit Court of the First District of Hinds County, Mississippi, against the Plaintiffs in Error, and the trial resulted in a judgment in his favor of \$15, 000.00. The Plaintiffs in Error prosecuted an appeal to the Supreme Court of the State of Mississippi, which appeal was affirmed without written opinion, and from the judgment of the Supreme Court of the State of Mississippi, affirming the judgment in favor of Defendant in Error, this writ of error is prosecuted.

Neither during the trial in the case in the Circuit Court by the evidence, pleadings, or instructions, or in the motion for a new trial was there any suggestion upon the part of the Plaintiffs in Error that the Act of Congress, approved April 14th, 1910, was not in full force and effect; nor neither was there any pleadings of any kind or character filed by the Plaintiffs in Error in the case to the effect that the car in question was in use July 1st, 1911, or that it has not been rebuilt since said date, or that its equipment was more than three inches out of standard. The only plea filed and relied on by the Plaintiffs in Error was the plea of general issue indicated and shown in this record. (Printed Record, page 5.)

In this Court it is assigned as error:

First. The Supreme Court of Mississippi erred in deciding and holding that it was not error on the part of the Court of original jurisdiction to give in charge to the jury the following instruction, viz:

"INSTRUCTION No. 1. The Court instructs the jury for and on behalf of the plaintiff as follows: That under Section 2 of the Act of Congress, approved April 14, 1910, it became and was the duty of the defendant companies, on the 15th day of March, 1913 to equip their cars which they were using on their railroads, with proper hand-holds, and it was the express duty of the defendants, as to all cars having ladders upon them, to have secure hand-holds or grab-irons

on the roofs, at the top of such ladders, and a failure to have secure hand-holds on the roofs, at the top of such ladders was a violation of the Act of Congress which made the defendant companies liable in damage to any employee who was injured in consequence of the violation of this law, and who at the time of such injury was engaged in the line of duty to defendant. Now, therefore, if you believe from the evidence in this case that George R. Williams, plaintiff, in the line of his duty, went upon the car in question, in the yards of defendant, being used by them, and that by reason of a defective hand-hold at the top of said car, he fell and was injured, you will return a verdict in favor of the plaintiff."

And it so erred because the Act of Congress referred to did not require the equipment of the cars with hand-holds and grab-irons on the roof, as the instruction directed, for the reason that the Act of Congress referred to requiring this was not in force on the 15th day of March, as stated in the instruction.

Second. The Supreme Court of Mississippi further erred in deciding that it was not error on the part of the Court of original jurisdiction to give in charge to the jury the following instruction, viz:

"INSTRUCTION NO. 2. The Court further instructs the jury, for and on behalf of the plaintiff, as follows: That it is provided by Section 4 of the Act of April 14, 1910, and as applied to these defendant companies that if they move or haul, or handle with commercial cars, any car which has a ladder thereon, and which has not secure hand-holds on the roof at the top of such ladders, that such car is then used at the sole risk of the companies, and they are made absolutely liable in damages to any employee who is injured in the line of duty by reason of their failure to have a secure hand-hold; and you are therefore instructed that in such cases, the employee does not assume the risk of injury, but the risk is carried by the company."

Third. The Supreme Court of Mississippi further erred in deciding that it was not error on the part of the Court of original jurisdiction to give in charge to the jury the following instruction, viz:

"INSTRUCTION No. 4. The Court instructs the jury for the plaintiff that it was the absolute duty of the defendants to have and maintain a safe hand-hold at the top of the car in question, and a failure so to do was negligence on the part of the said companies as a matter of law." (Printed Record, 268.)

Statement as to Those Portions of the Record Printed and Appended Hereto.

No portion of Record printed herein, because Whole Record is now before the Court in printed form.

MOTION TO DISMISS.

This motion is based upon the claim, which, we respectfully submit, is patent, that the alleged Federal questions are wholly formal, are so devoid of merit as to be frivolous, and have been so explicitly foreclosed by the decisions of this Court as to leave no room for real controversy.

Mr. Taylor, in his work on Jurisdiction and Procedure in the United States Supreme Court, says (page 638):

"A writ of error from the Federal Supreme Court to the State Court, will be dismissed where the Federal question relied upon to confer such jurisdiction manifestly lacks all color of merit."

This Court said in the case of *Equitable Life Assurance Society vs. Brown*, 187 U. S. 308, 47 Law Ed. 190, as follows:

"But it is well settled that not every mere allegation of a Federal question will suffice to give jurisdiction. There must be a real, substantive question on which the case may be made to turn; that is, a real and not merely formal Federal question is essential to the jurisdiction of this Court. Stated in another form, the doctrine thus declared is, that

although, in considering a motion to dismiss, it be found that a question adequate abstractly considered to confer jurisdiction was raised, if it likewise appear that such question is wholly formal, is so absolutely devoid of merit as to be frivolous, or has been so explicitly foreclosed by a decision or decisions of this Court as to leave no room for controversy, the motion to dismiss will prevail *New Orleans Water Works Co. vs. Louisiana*, 185 U. S. 336-345, and authorities there cited."

The same rule is announced in the following cases:
New York & N. E. Railroad Co. vs. Bristol, 151 U. S. 556, 38 Law. Ed., 269;
Southern Railroad Co. vs. Carson, 194 U. S., 136, 48 Law Ed., 907;
Louisville & Nashville R. R. Co. vs. Melton, 218 U. S. 36, 54 Law Ed., 921;
Easterling Lumber Co. vs. Pierce, 235 U. S. 380, 59 Law Ed., 279;
Erie Railroad Co. vs. Solomon, 237 U. S. 427, 57 Law Ed., 1033;
Manhattan Life Insurance Company vs. Cohen, 234 U. S. 123, 58 Law Ed., 1245.

This cause was tried in the Circuit Court of the First District of Hinds County, Mississippi, upon the sole question of law as to whether or not the plaintiffs in error were absolutely liable for the injury to the defendant in error and as to whether or not plaintiffs in error could show the exercise of reasonable care and diligence in defence of the action. This question has been so fully foreclosed by the numerous adjudications of this Court as to be regarded as frivolous.

It has been invariably held since the passage of the Act of 1893 and the amendments thereto, that the Acts imposed absolute duty upon the employer of making the equipment provided for in the statute absolutely safe; that under the statutes there was never presented any question of reasonable and ordinary care, lack of knowledge of the employer or reasonableness of inspection. In all cases it has been held only necessary

for the employee to show his employment, the use of the instrumentality, the injury as the result of defective equipment used in violation of these enactments. It would answer no good purpose to enter into a discussion of the various adjudications of this Court on that point. So far as the purpose of this argument is concerned it is sufficient to refer the attention of the Court to the latest case upon the subject: that of *Texas & Pacific Ry. Co. vs. Rigsby*, Advance Sheets, dated May 15, 1916, p. 482. That was a suit just like this one, brought for an injury which occurred September 4, 1912, under the amendment of the year 1910, on account of the failure of the Railroad Company to furnish a suitable and safe ladder at the side of the car. This Court, through Mr. Justice Pitney, used the following language:

"It is insisted that Rigsby was not within the protection of the Act because he was not coupling or uncoupling cars at the time he was injured. The reference is to Sec. 4, of the Act of March 2nd, 1893, which required 'secure grab-irons or hand-holds in the ends and sides of each car for greater security to men in coupling and uncoupling cars. This action was not based upon that provision, however, but upon Section 2 of the Amendment of 1910, which declares: 'All cars must be equipped with secure sill steps and efficient hand-brakes, all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand-holds, or grab-irons on their roofs at the top of such ladders.' There can be no question that a box car having a hand-brake operated from the roof requires also a secure ladder to enable the employee to safely ascend and descend, and that the provision quoted was intended for the special protection of employees engaged in duties such as that which plaintiff was performing."

It will be noted in the present case Defendant in Error was performing the identical duty that Rigsby

was engaged in. The Defendant in Error was going up the side of the car for the purpose of setting the brake in order that the car would stand fast. It was further insisted in the Rigsby case that Rigsby was not engaged in interstate commerce. It was shown, however, that the car was used by the railroad, which itself was engaged in interstate commerce, and on that point Mr. Justice Pitney said:

"If is earnestly insisted that Rigsby was not under the protection of the Safety Appliance Acts because, at the time he was injured, he was not engaged in interstate commerce. By Section 1, of the 1903 amendment its provisions and requirements, and those of the Act of 1893 were made to apply to 'all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce. * * * and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith,' subject to an exception not now pertinent. And by Section 5 of the 1910 Amendment, the provisions of the previous Acts were made to apply to that Act with a qualification that does not affect the present case. In *Southern R. vs. U. S.* 222 U. S. 20, 56 L. Ed., 72, 32 Sup. Ct. Rep. 2, 3 N. C. C. A., 822, which was an action to recover penalties for a violation of the Acts with respect to cars some of which were moved in intrastate traffic and not in connection with any car or cars used in interstate commerce, upon a railroad which was a part of a through highway for interstate traffic, it was held that the 1903 Amendment enlarged the scope of the original Act so as to embrace all cars used on any railway that is a highway of interstate commerce, whether the particular cars are at the time employed in such commerce or not. The question whether the legislation as thus construed was within the power of Congress under the Commerce Clause was answered in the affirmative, the Court saying (page 27): 'Speaking only of railroads which are highways of both interstate and intrastate commerce,

these things are of common knowledge. Both classes of traffic are at times carried in the same car and when this is not the case, the cars in which they are carried are frequently communicable in the same train and in the switching and other movements at terminals. Cars are seldom set apart for exclusive use in moving either class of traffic, but generally are used interchangeably in moving both, and the situation is much the same with trainmen, switchmen and like employees, for they usually, if not necessarily, have to do with both classes of traffic. Besides, the several trains on the same railroad are not independent in point of movement and safety, but are inter-dependent, for whatever brings delay or disaster to one or results in disabling one of its operatives, is calculated to impede the progress and imperil the safety of other trains. And so the absence of appropriate safety appliances from any car of any train is a menace, not only to that train, but to others."

Now, in the present instance we have shown that the Defendant in Error was engaged in interstate commerce: in other words, that he was protecting a track or lead from being congested, which track or lead was then used in interstate commerce by keeping cars from running back on to it. The question as to whether or not the employee was engaged in interstate commerce is immaterial under this decision.

Again, it was contended in that case that no negligence was shown. In reference to that the Court said:

"It is argued that the statute does not apply except where the car is in use in transportation at the time of the injury to the employee, and that since it does not appear that the car in question was in bad order, because of any negligence on the part of the railway company, and it was being taken to the shop for repairs at the time of the accident, there is no liability for injuries to an employee who had

notice of its bad condition, and was engaged in the very duty of taking it to the shop. This is sufficiently answered by our recent decision in the *Great Northern R. Co. vs. Otos*, 239 U. S., 349, 351, ante, 124, 36 Sup. Ct. Rep. 124, where it was pointed out that although Sec. 4 of the Act of 1910 relieves the carrier from the statutory penalties while a car is being hauled to the nearest available point for repairs, it expressly provides that it shall not be construed to relieve a carrier from liability in a remedial action for the death or injury of an employee caused by or in connection with the movement of a car with defective equipment. The question whether the defective condition of the ladder was due to defendant's negligence is immaterial, since the statute imposes an absolute and unqualified duty to maintain the appliance in secure condition."

"*St. Louis I. M. & S. R. R. Co. vs. Taylor*, 210 U. S. 281, 294, 295, 52 L. Ed., 1061, 1068, 28 Sup. Ct. Rep. 616, 21 Am. Neg. Rep., 464; *Chicago B. & Q. R. Co. vs. United States*, 220 U. S. 559, 575, 55 L. Ed. 582, 31 Sup. Ct. Rep., 612; *Delk vs. St. Louis V. S. F. R. Co.* 220, U. S. 580, 586, 55 L. Ed., 590, 595, 31 Sup. Ct. Rep. 617.

"Of course, the employee's knowledge of a defect does not bar his suit, for by Sec. 8, of the Act of 1893, an employee injured by any car in use contrary to the provisions of the Act is not to be deemed to have assumed the risk, although continuing in the employment of the carrier after the unlawful use of the car has been brought to his knowledge; and by Sec. 5 of the Act of 1910, the provision of the 1893 Act are made applicable to it, with a qualification that does not affect remedial action by employees.

"The Circuit Court of Appeals correctly disposed of the case, and its judgment is affirmed."

It will be unnecessary, therefore, for us to review the large number of cases referred to by this Court; and from this case three rules are drawn:

(a) That the amendment of 1910 under which this suit is brought was enacted for the benefit and referred to an employee going up a ladder for the purpose of using a hand brake on a car;

(b) That neither the employee nor the car need be engaged in interstate commerce, it only being necessary that the carrier itself be engaged in interstate commerce;

(c) The question as to whether or not the defective condition of the equipment was due to the negligence of the carrier or not was not material since the statute imposed an unqualified duty to maintain the equipment in secure condition.

The Act of 1910 in Effect July 1, 1911.

It is contended by the attorney for the plaintiffs in error in this case, however, that upon March 15, 1913, the Safety Appliance Act of 1910 was not in effect, it being the contention that the Act did not go into effect until the first of July, 1916. In our brief on the merits in this case, we have fully discussed the question as to when the Act of April 14, 1910, went into effect. We think we have demonstrated therein that the contention of plaintiffs in error in respect thereto is frivolous, and we now make reference to the argument therein contained. We do not deem it necessary to repeat the same here. We have gathered in our brief on the merits all the authorities throwing light upon the assignments of error of plaintiffs in error touching the question as to when the Act of April 14, 1910, went into effect.

MOTION TO AFFIRM.

We respectfully submit that it is apparent that the writ of error in this case was taken solely for delay, and that the questions presented by the assignments of error have been foreclosed by previous decisions of this Court, and are so frivolous as to need no further argument, for the reason that:

(a) The Safety Appliance Act in question imposed an absolute duty upon the plaintiffs in error to maintain the ladder and hand-holds at the top of the car in safe condition.

(b) The Act of March, 1910, providing for ladders at the sides of cars and hand-holds at the top thereof, according to its express provisions, went into effect July 1, 1911.

(c) That even if it should be true that the Interstate Commerce Commission had authority to suspend the Act as to cars in use July 1, 1911, which had not since been rebuilt, or where the standard was more than three inches from that required by the Interstate Commerce Commission, the plaintiff in error did not make the point in the trial court, where the same might have been met by the defendant in error, and has not by any kind of pleading and proof sought to bring itself within the immunity in which it now seeks to take refuge.

We, therefore, respectfully invoke the present Subdivision 5 of Rule 6:

"The Court in any pending cause will receive a motion to affirm on the ground that it is manifest that the writ or appeal was taken for delay only or that the questions on which the decision of the cause depend are so frivolous as not to need further argument. The same procedure shall apply to and control such motion as is provided for in cases of motions to dismiss under Paragraph 4, of this rule."

If jurisdiction is maintained, we invoke the rule announced by the *Mo. Pac. Ry. Co. vs. Castle*, 224 U. S., 511, wherein Chief Justice White said:

"Defendant in error moves to affirm the judgment under Subdivision 5 of Rule 6. The motion we think should prevail, since the questions urged upon our attention as a basis for reversal of the judgment have been so plainly foreclosed by decisions of this Court as to make further argument unnecessary."

We also respectfully invoke the doctrine announced in *Deming vs. Carlisle Packing Co.*, 226 U. S., 102, through Chief Justice White, that, as the:

"Conclusion that a writ of error has been prosecuted for delay is the inevitable result of a finding that it has been prosecuted upon a Federal ground which is unsubstantial and frivolous, it follows that the question of delay is involved in and requires to be considered in passing upon a motion to dismiss because of the frivolous character of the Federal question. The decisions of this Court also leave it no longer open to discussion that where it is found that a Federal question upon which a writ of error is based is unsubstantial and frivolous, the duty to affirm results."

We call the Court's attention to the following cases where, under the above rule, damages were allowed:

Prentice v. Pickersgill, 6 Wal., 511, where 10 per cent was allowed.

Barrow vs. Hill, 13 Howard 54, where 10 per cent. was allowed;

Tex. & Pac. R. R. Co. vs. Volk, 151 U. S., 73, where 10 per cent. was allowed;

Deming vs. Carlisle Packing Co., 226 U. S. 102, where 5 per cent. was allowed;

Southern Ry. Co. vs. Gadd, 233 U. S., 572, where 5 per cent. was allowed;

We, therefore, respectfully request that interest and 10 per cent. damages be allowed, as authorized by Subdivision 2, of Rule 23.

Respectfully submitted,

WILLIAM H. WATKINS,

Attorney for Defendant in Error.

WATKINS & WATKINS,

M. F. HARRINGTON,

Of Counsel.

IN THE
SUPREME COURT OF THE UNITED
STATES

No. No 637

ILLINOIS CENTRAL RAILROAD COMPANY
AND THE YAZOO & MISSISSIPPI VALLEY
RAILROAD COMPANY, PLAINTIFF IN
ERROR,

VS.

GEORGE R. WILLIAMS, DEFENDANT IN
ERROR.

BRIEF OF DEFENDANT IN ERROR ON MOTION
TO AFFIRM.

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BRIEF AND ARGUMENT FOR DEFENDANT IN
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THE PLEADINGS.

Appellee brought this action to the Circuit Court of the First District of Hinds County, against the appellants, for certain personal injuries sustained by him while employed by appellants at Memphis, Tennessee, on the 15th of March, 1913. The declaration

stated a cause of action under the Safety Appliance Laws, passed by Congress.

The pleadings and evidence in this case make out a cause of action under the Safety Appliance Laws. They would make out a cause of action under Section 4 of the Act of 1893. They clearly, unmistakably, make out a cause of action under Section 2 of the Act of April 14, 1910.

II.

The first Safety Appliance Act, throwing any light on the question here, was the Act of Congress approved March 2nd, 1893. At that time, it was known that there was a terrific loss of life and limb on American railroads, and Congress determined to do what it could to put a stop to this, and accordingly they adopted this first Safety Appliance Act. The Act covered more than hand-holds or grab irons. It covered certain equipments for engines and it covered automatic couplers or couplers which were coupled by impact. By Section 4 of the Act now being discussed, it is provided:

"From and after the 1st day of July, 1895, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or hand-holds in the ends and sides of each car, for greater security to men in coupling and uncoupling cars."

The railroads proceeded to comply with this Act

of Congress and the uniform action by the railroads themselves is the very best evidence against them as to the true construction of the Act. They proceeded to comply with this law by putting at two corners of each car, certain hand-holds or grab irons, a short ways from the corner and also on the roof. All these grab irons are, properly speaking, **at the end of the car**. The set going up on the side might be called "side grab irons" and those up on the end of the car, "end grab irons," but all of these, as well as the grab irons or hand-holds on the roof, are hand-holds or grab irons **at the end of the car**. **The grab iron on the roof is the most essential of all the grab irons**, for the safety of all men engaged in coupling and uncoupling cars. The coupler law of course, requires that the men can couple and uncouple the cars by impact, without going between the cars, but there are other duties which the men have necessarily to perform. In order to couple cars when detached from a locomotive and frequently in order to uncouple them, it is essential to have a hand brake on the car. When a car is loose from the engine and moving and it is desired to couple it to another car by impact, a brakeman must get on top of the car and control its movements by the use of the hand brake. Congress therefore wisely provided that they should equip these cars with hand-holds or grab irons, for the greater security of the men engaged in coupling and uncoupling cars.

I wish the Court now clearly to understand that at present I am discussing hand-holds and grab irons

and I am not discussing ladders. It is because the safety appliance known as a ladder was not covered by the Act of 1893. Ladders were practically unknown on railroad cars at that time, although now in very common use. The method to be adopted by a railroad employe in 1893 in getting up to the wheel of the brake in either the coupling or uncoupling of cars, was to go up with the assistance of the grab irons at the corner of the car and the grab irons or hand-holds on the roof. The most essential of all these grab irons for the safety of the men in getting up to the brake wheel and down from it again, was the grab iron or hand-holds on the roof. The companies, complying with the Act of Congress, equipped the cars with grab irons at the corners and on the roof. The grab iron on the roof was sometimes one piece of metal diagonally across the corner. Sometimes two grab irons were used, one running parallel with the end of the car, and one parallel with the side of the car. In some instances, they had a right angle grab iron. But all railroads recognized that of all the grab irons, the most essential was the one on the roof of the car, because there was where the greatest danger was, in going up or down. That will be true under any circumstances and it will be particularly true on occasions of wind storms, snow, ice or sleet on the roof of the car. We have never heard that any railroad company disputed this to be the meaning of the law in any appellate Court, except one. They did have the hardihood to present to the Texas Civil Court of Appeals the question whether

the hand-hold on the roof was covered by Section 4 of the Act of 1893. I credit to the counsel who presented such an idea, the charitable presumption that he had never gone on top of a railroad car to set a brake or release it, or he would never have made the ridiculous claim that you had to have hand-holds both ways from the corner of the car for the security of the brakeman, but that you needed no hand-hold at all at the most dangerous place of all, "the roof." The case to which I refer is:

M. K. & T. Ry. Co., vs Barrington 173 S. W. 595.

The Texas Court, which is the only appellate tribunal that has ever had to meet the question in this country, promptly disposed of the railroad's contention in the following language.

'The train upon which appellee was at work at the time hereceivedtheinjuriescomplainedof was engaged in interstate commerce, but we think it quite clear that the alleged defective appliance which caused his injuries was covered by the federal statute, enacted for the safety of employes in 1893, amended in 1896 and 1908, and known as the Safety Appliance Act. The case is not therefore one arising under the federal Employer's Liability Act (Act April 22, 1908, C. 149 35 Stat. 65 (U. S. Comp. St. 1913, P.8657), in which the comon-law rule with respect to the assumption or risk applies. This being true, there was no issue of assumed risk in the case, and the peremptory instruction was properly refused. The Safety Appliance Act referred to above provides that it shall be unlawful for any rail-

road company to use any car in interstate commerce that is not provided with secure grab-irons or handholds, and declares that any employe injured on any car in use, contrary to the provisions of the act, shall be deemed to have assumed the risk, although he had full knowledge thereof. In construing this statute, the Supreme Court of the United States, the Court of Civil Appeals for the Fourth District of Texas, and this Court held that it makes it the absolute duty of railway companies to have the cars in use by them equipped with secure handholds, regardless of the question of reasonable care to have and keep them secure, and that, where an injury to an employe happens from an insecure hand-hold, said statute denied to the employer the defense of assumed risk. *Railway Co. vs. Kurts* 147 S. W. 658; *Railway Co. vs. Plemmons*, 171 S. W. 259; *Delk vs. St. Louis & S. F. Ry. Co.* 220 U. S. 580, 31 Sup. Ct. 617, 55 L. Ed. 590; *Railway Co. vs. United States*, 220 U. S. 559, 31 Sup. Ct. 612, 55 L. Ed. 582. In the first case cited it is held that railway companies under said statute, are required to do all things that are possible to have and maintain on the cars in use by them secure handholds, 'even if they have for that purpose to keep inspectors on every train they move.' Applying these rules in the present case, which we think must be done, it is clear that the Court would have erred if it had taken the case from the jury and directed a verdict for the appellant. **The fact that the handhold in question was on the top of the car and not on the side or end thereof is unimportant.** It was a necessary appliance for the safety of the railway company's employes in performing the duties required of them, and is clearly included in the statute. Furthermore, we find that at the time appellee was hurt he

was climbing up to the top of the car on a ladder, and that by Act of Congress, passed April 14, 1910, to supplement an act to promote the safety of employes, etc. (U. S. Comp. Stat. 1901, Supp. 1911, P. 2 p. 132), it is provided, among other things, that:

'All cars having ladders shall also be equipped with secure hand-holds or grab irons on their roofs at the top of such ladders.'

Nor does the fact that the car in question was a 'foreign car' alter the case. The Safety Appliance Act, as we understand, apply to any car in use by the carrier."

Two Circuit Courts of Appeals have had to determine in criminal actions whether the Act of April 14, 1910, was in force and they have both held that it was in force. Again we have a case where the railroad attorneys stand on one side claiming the law and we have the unanimous opinion of two different Circuit Court of Appeals that the law is the way we claim. The criminal cases to which we refer and which we invite the Court to read as holding flat-footed that the law is as we say it is in this case are as follows:

U. S. vs. Trinity & B. V. Ry. Co. 211 Fed. 448.

U. S. vs. Great Northern Ry. Co. 229 Fed. 927.

The Act of 1893, requiring these grab irons on the sides and ends of the cars, including of course, the grab iron on the roof, applied only to cars which were being used in interstate commerce. A railroad

engaged in interstate commerce, could use in its intrastate commerce, a car not equipped, as required by Section 4. This condition continued until 1903, when Congress drew the line a little tighter and by Section 1 of the Act, approved March 2nd, 1903, it Act of March 2nd, 1893, should "be held to apply to was provided that all the appliances required by the all trains, locomotives, tenders, cars, and similar vehicles, **used on any railroad engaged in interstate commerce.**" So that, by the Act of 1903, the railroads were required to have these hand-holds or grab irons on all cars which they used. The only requirement was that the railroad itself should be engaged in interstate commerce. If so, then it was guilty criminally and liable civilly, if it used any car without proper grab irons and hand-holds on a car engaged in interstate commerce or in intrastate commerce.

III.

Congress realized that further legislation was necessary. From the time the Act of 1893 was adopted, up to 1910, there had been much change in railroad cars. Particularly, had refrigerator cars come into very general use. On this class of cars, running boards are very essential on the roof. They are on any kind of a box car, but more so on refrigerator cars, where ice has to be moved about, as during those years, from 1893 on, an enormous business had been developed in the shipment of dressed meats from the great packing centers and in the shipment of strawberries, fruits and vegetables

from the southern states to the north and from California to the east. Cars had become much longer and of greater capacity and Congress determined to do some additional legislating. They determined not only to require additional appliances, but they determined to have these appliances **standardized** or made uniform, within a reasonable time. From the outset, they had been trying to get uniform couplers. It was found that with so many different kinds of couplers, the couplers did not always work well and subjected the employe and the public to unnecessary hazards. So Congress determined that the safety of the employe and of the shipping and traveling public, required additional safety appliances and furthermore, required the standardization of railroad equipment. Accordingly, Congress passed the Act approved April 14, 1910, which is the Act under which this action was prosecuted to judgment, although the liability of the company is undisputed even if we were tested by the Act of 1893. In order to get a clear view of this Act, let us consider what appliances were required by the Act of 1893. Here they are:

1. Equipping locomotive engines, engaged in interstate traffic with a power drive wheel brake, so as to operate what is known as the "train brake system."
2. Requiring them to equip their cars with automatic couplers, which would couple by impact.
3. Requiring them to have hand-holds and grab

irons on their cars for the greater security of the men.

These appliances, and these alone were required by the Act of 1893. But certain additional appliances were required by the Act of 1910. By Section 2 of the Act of 1910, it is provided as follows:

"SEC. 2. That on and after July first, nineteen hundred and eleven, it shall be unlawful for any common carrier subject to the provisions of this act to haul, or permit to be hauled or used in its line any car, subject to the provisions of this Act not equipped with appliances provided for in this act, to-wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards, shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand-holds or grab irons on their roofs at the tops of such ladders; provided, That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars, while they are thus combined for such purpose."

What are the additional requirements of the Act of 1910?

1. They must equip their cars with secure sill steps. That was not required by Congress up to that time.

2. They must equip their cars with efficient hand brakes. That was not required by Congress up to that time.

3. All cars requiring secure ladders, must be

equipped with such **ladders**. Congress had never mentioned a ladder up to April 14th, 1910. But box cars, and stock cars and other special cars were gradually being equipped with ladders and Congress knew this.

5. They must equip their cars with secure running boards. Congress had never before legislated on running boards.

6. All cars having ladders must be equipped with secure hand-holds or grab irons on the roof and the **top of such ladders**. Congress had never before required a grab iron at the top of a ladder, for the good and sufficient reason that Congress had never required a ladder. They were required to have hand-holds or grab irons to work in connection with the grab iron or hand-hold at the corner. But up to April 14th, 1910, no hand-hold was required at the top of a ladder on the roof, because Congress had never legislated on ladders. The ladder was a newer appliance which had come into considerable use, and Congress took notice of it and legislated as to it. This action just referred to, gave the carriers about fourteen and one-half months to get on this equipment, if it did not have it on already. But this Section 2, absolutely requires them to have on every car, by July 1st, 1911, the equipment required by Section 2. Congress never authorized the Interstate Commerce Commission to suspend Section 2. Furthermore, the Interstate Commerce Commission has never attempted to suspend Section 2. The con-

tention of the railroad company in this case is that Section 2 was suspended. We cannot understand why such a statement is made. Surely, it must be through oversight. There is not a single line or a word in the Act of Congress, authorizing the Commission to suspend Section 2. Congress itself provided when the railroads must comply with Section 2. Congress itself said when the railroads must have efficient hand brakes, secure running boards, secure ladders and hand-holds, in line with these ladders and not diagonally, and they must have hand brakes. Congress was reasonable. Congress gave them nearly fifteen months to comply with its requirements, but it gave no longer and it did not authorize the Interstate Commerce Commission to give them any more and the Interstate Commerce Commission has never attempted to give them even an hour after July 1st, 1911, within which to comply with Section 2. The Interstate Commerce Commission was given authority to suspend Section 3. It did suspend Section 3 until July 1st, 1916, as to certain cars, but Section 3 has absolutely nothing to do with the requirements of Section 2. It never attempted to suspend Section 2. This will all be apparent not only from a reading of the acts, but from a reading of the two orders of the Interstate Commerce Commission made on March 13th, 1911. This Act that I am now discussing contains Section 3, which is as follows:

“SEC. 3. That within six months from the passage of this act the Interstate Commerce

Commission, after hearing, shall designate the number, dimensions, location, and manner of application of the appliances provided for by section two of this act and section four of the act of March second, eighteen hundred and ninety-three, and shall give notice of such designation to all common carriers, subject to the provisions of this act by such means as the commission may deem proper, and thereafter said number, location, dimensions, and manner of application as designated by said commission shall remain as the standards of equipment to be used on all cars subject to the provisions of this act, unless changed by an order of said Interstate Commerce Commission, to be made after hearing and for good cause shown, and failure to comply with any such requirement of the Interstate Commerce Commission, to be made after full hearing, and for good cause shown; and failure to comply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of this act: Provided, That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of cars actually in service upon the date of the passage of this act. Said commission is hereby given authority, after hearing, to modify or change, and to prescribe the standard height of drawbars and to fix the time within which such modification or change shall become effective and obligatory, and prior to the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard now fixed or the standard so prescribed, and after the time so fixed it shall be unlawful to use any car or

vehicle in interstate or foreign traffic which does not comply with the standard so prescribed by the commission."

The Court will observe that this section does not authorize the commission to suspend Section 2. It merely provides for uniformity or standardization of railroad equipment. It provides for the standardization of the sill steps, the hand brakes, the ladders, the running boards and hand-holds, covered by Section 2 just mentioned, but Section 3 authorized the standardization of more than that. It also authorized the Commission to **standardize the draw bars**. Then, furthermore, as showing the plain meaning of it, Congress further provided by Section 4 of the Act, as follows:

"SEC. 4. That any common carrier subject to this act using, hauling, or permitting to be used or hauled on its line, any car subject to the requirements of this act not equipped as provided in this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered as provided in section six of the act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six: Provided, That where any car shall have been properly equipped, as provided in this act and the other acts mentioned herein, and such equipment shall have become defective or insecure while such car was being used by such carrier upon its line of railroad, such car may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available

point where such car can be repaired, without liability for the penalties imposed by section four of this act or section six of the act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, if such movement is necessary to make such repairs and such repairs cannot be made except at such repair point; and such movement or hauling of such car shall be at the sole risk of the carrier, and nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employe caused to such employe by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure or which is not maintained in accordance with the requirements of this act and the other acts herein referred to; and nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of drawbars, in revenue trains or in association with other cars that are commercially used, unless such defective cars contain live stock or 'perishable' freight."

Not content with that, and determined to protect the men employed on these railroads, Congress provided in Section 5, as follows:

"SEC. 5. That except that, within the limits specified in the preceeding section of this act, the movement of a car with **defective or insecure equipment** may be made without incurring the penalty provided by the statutes, but shall in all other respects be unlawful."

I direct the Court's attention specifically to the

following language contained in Section 4 and which is applicable to these damage cases brought by employees. Here is what Congress says:

“Nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employe caused to such employe by reason of or in connection with the movement or handling of such car with **equipment that is defective or insecure**, or which is not maintained in accordance with the requirements of this Act and the other Acts herein referred to.”

The Acts referred to were those of 1893 and 1903 and the amendment of 1896, which is not material here. So that Congress said that they should be liable in damages if they hauled any car which was not equipped in accordance with the requirements of the Act of April 14th, 1910, March 2nd, 1903 or March 2nd, 1893, or regardless of these Acts, it was made unlawful and they were made liable in damages if they hauled **any car “with equipment which is defective or insecure.”**

Can the human mind express more clearly the liability of a railroad company for hauling cars with defective appliances? Counsel admit that if Section 2 was not suspended, they are hopelessly wrong. Where do they ever get the idea that Section 2 was suspended? The words “this section” occur only in Section 3 and which section authorized the Interstate Commerce Commission to make standards for the safety appliances required by Section 2 **and other appliances**, particularly the **draw bars**.

IV.

By Section 2, Congress is requiring the railroads to equip, if they had not already done so, their cars with sill steps, hand brakes, running boards and ladders with hand-holds, right above the ladder in all cases where ladders were necessary. The cars on which ladders should be put, was necessarily left to the railroad company, unless specific orders were given by the Interstate Commerce Commission, but until the Interstate Commerce Commission should prescribe some standard, the railroads could go on running their cars with the regular hand-holds or grab irons in the corners and on the roof, or they could have ladders with grab irons above the ladders if they preferred. But an equipment of either kind would satisfy Section 2 of the Act of 1910. In other words, they either had to equip them according to Section 4 of the Act of 1893 as to hand-holds and grab irons or according to Section 2 of the Act of 1910, as to ladders and grab irons. This is the construction placed on the Act itself by the railroads and is manifestly right until such time at least as a different standard was prescribed by the Interstate Commerce Commission.

Let us take the case of running boards. Congress said, in substance by Section 2 of the Act of April 14th, 1910, to its railroads:

"You must have secure running boards on all cars that require running boards."

They were not required to have running boards on flat cars or gondolas. But all box cars and refrigerator cars must have secure running boards. Congress did not prescribe any standard. The railroads at that time had their cars equipped very generally with running boards. But very often, they were nailed down instead of bolted. These running boards were ten and twelve inches wide and the writer has seen them as narrow as eight inches. But if they had such running boards and they were secure by July 1st, 1911, then the railroads were complying with the law. No standard of running boards was fixed by Congress, but by July 1st, 1911, every railroad company must have secure running boards on every car requiring a running board. They were not required to have a standard or uniform running board, but it must be a secure running board. When the Interstate Commerce Commission came to enforce Section 3 mentioned, as to standardization, they prescribed a different kind of running board. For the convenience of the Court, I am printing and appending to this brief as Exhibit A, part of the first order made by the Interstate Commerce Commission on the 13th day of March, 1911. The second order, I am appending as Exhibit B. On page three of Exhibit A, you will find the standard of running boards prescribed by the Interstate Commerce Commission. Here is what they say:

“Longitudinal running boards shall be not less than eighteen, preferably twenty inches in width.”

On the 13th day of March, 1911, the Commission by virtue of the power vested in it by Section 3 of the Act of April 14th, 1910, prescribed a standard running board which must not be less than eighteen inches wide. On the same day and under the order Exhibit B, they gave them until July 1st, 1916, in which to put on the eighteen inch wide running boards, unless the car was reshopped before that time. Counsel for the railroad company very ingeniously refrained from giving the Mississippi Court any light as to this all important order, Exhibit A, which shows conclusively that the Interstate Commerce Commission well knew that it had no authority to suspend Section 2 and all its authority was confined to Section 3, which authorized it to standardize the equipment named in Section 2, and **also authorized it to standardize equipment not mentioned therein.** The Interstate Commerce Commission makes it perfectly plain that they never intended to relieve them of the duty of having ladders where ladders were required and hand-holds on the roof, running parallel with these ladders, for the Commission provided, as shown by page seven of Exhibit A, as follows, as to the hand-holds on the roof of the car:

"One parallel to treads of each ladder, not less than eight nor more than fifteen inches from the edge of the roof, except on refrigerator cars, where ice hatches prevent, or location may be near edge of roof."

That was the standard prescribed by the order of Exhibit A made on March 13th, 1911, and they

were given until July 1st, 1916, in which to change their hand-holds, provided they were not, on the existing cars, too far out of place. By the order, Exhibit B, made at the same time, and as shown by Paragraph G thereof, the Interstate Commerce Commission provided as follows:

"Carriers are not required to change the location of hand-holds (except end hand-holds under end sills), ladders, sill steps, brake wheels, and brake staffs on freight train cars where the appliances are within three inches of the required location, except that when the cars undergo regular repairs they must then be made to comply with the standards prescribed in said order."

The Court will therefore see that the Commission prescribed standards, but it did give them until July 1st, 1916, to comply on all their cars. If the hand-holds were within three inches of the standard required by the commission, then they might leave these hand-holds where they were, without changing them, until July 1st, 1916, or until the car was re-shopped, but if the hand-hold was more than three inches from where the standard required it to be, then they did not have until July 1st, 1916, in which to make the change. The Commission speaks of changes. Now, let us take the case of a hand-hold at the top of a ladder. The Commission said that the hand-hold might not be less than eight inches from the edge of the roof, not more than fifteen inches. That is the standard. But they did not have to change it to the standard, if the hand-hold already

at the top of the ladder was within three inches of the standard required. For example, if they had a car where the hand-hold at the top of the ladder was seven inches from the edge of the roof, they did not have to make any change until July 1st, 1916, provided it was a secure hand-hold. If it was six inches from the edge of the roof, no change was required. If it was five inches from the edge of the roof, no change was required. But if the hand-hold was within four inches of the edge of the roof, they had to change it to the standard required by the Commission. The Commission said it might be as far away from the edge of the roof as fifteen inches. Under the order, Exhibit B, made the same date, if sixteen inches from the eaves, they need not make the change immediately. If it was seventeen inches, they need not change. If it was eighteen inches, they need not change, but if it was nineteen or twenty or twenty-two or twenty-four inches from the eaves, then they must make the change at once. In view of these specific orders of the Commission, why are counsel justified in making any claim that the railroad has not violated the Act of Congress on which we rely?

V.

Let us calmly consider what the argument of these railroad attorneys means. They say that Section 2 was suspended, although Congress never authorized its suspension and although the Interstate Commerce Commission never attempted to suspend

it, and only suspended the time within which they should equip their cars with the standard appliances prescribed by the Commission. If these railroad attorneys are right, then until July 1st, 1916, they could start out their trains, made of box cars, equipped like this:

Without a sill step on them, without a ladder on them, without a grab iron or hand-hold on the roof, without a running board on them and without a hand brake on them. Can this Court imagine a train of box cars without a hand-hold or grab iron on the roof, without a sill step, without a ladder, without a running board and without hand brakes? How could they couple and uncouple cars when detached from the engine, without a hand brake? How could they do the enormous work of switching, without hand brakes? How could they control the train if the air hose broke? How could they control the train if there was any trouble in the air line? A railroad train made up of box cars, without grab irons, hand-holds, brakes, running boards or sill steps, would be a fitting sight for Gods and men. And yet these counsel gravely urge such an absurd proposition on the highest Court in the Republic.

This Court recently dealt with the liability of a railroad company for failure to have a secure hand-hold.

Texas & Pacific R. R. Co. vs. Rigsby, —U. S.

That case was prosecuted under Section 2 of the Act of April 14th, 1910, just as we have prosecuted this case. That case was a **ladder** case also. **This is a ladder case.** I have pointed out to the Court already that the hand-holds and grab irons by which the men should get up to the brake wheel and down from it with safety in coupling and uncoupling cars, was covered by the Act of 1893 and that that Act could be complied with by having two hand-holds on the roof, one towards the side and the other towards the end of the car, or with a diagonal hand-hold. But a diagonal hand-hold would not comply with the requirements of Section 2, under which this action is prosecuted. Congress very wisely provided that where there was a ladder which was used as the means of getting up and down, instead of using hand-holds or grab irons, then they must have suitable and secure grab irons at the top of the ladder. It would not do in the judgment of Congress, to have simply something diagonal across the corner. When men went up a ladder, Congress deemed it prudent that the hand-hold should be right on the roof, above and in line with the ladder. The car from which Williams, the appellee herein fell, was a car which the Illinois Central had equipped with a ladder on the side and a hand-hold on the roof, as the means of getting up and down on that car. They could have complied with the Act of Congress by having had hand-holds on it, but the company deemed this car to be equipped with a ladder and hand-hold on the roof, so that this is, strictly a

ladder case. It was not one of the rungs on the side of the car that gave way, but the hand-hold at the top of the ladder, as covered by Section 2 referred to, just the same as the rungs on the side. They are all in the very same sentence.

VI.

From the time the Act of 1893 went into effect all railroads were required to have secure grab irons or hand-holds that the men could use in the operation of the trains and in switching. At the time That Act was passed there was scarcely any ladders—the writers believes none—in use on railroad cars. Every railroad construed the Act of 1893 to mean that where hand-holds were put at both corners of a car there must be some kind of a hand-hold on the roof. The fact that every railroad in the United States construed the statute in that way is practically conclusive against the railroads. The Government has likewise treated the law in the same way.

But since 1893 there has been much change in the equipment of cars. If you go today into railroad yards in any terminal you will find ladders on a very large number of cars. Some of these will be ordinary box cars, some automobile cars, some stock cars and some refrigerator cars. These ladders differ from the old-time hand-holds that men used in ascending and decending in their work as brakemen. These ladders are not all alike. But in substance they are all made in a ways similar to the ladders

that we have all climbed when boys. To constitute a ladder there must be not only the rounds but there should be two side pieces. These ladders are safer for the men than the common hand-holds. The sides protect the brakeman in case that his foot slipped on the round of the ladder. If it slipped either way the sides keep it from slipping off and may save him from falling. For this reason many railroads adopted the ladders instead of the common hand-holds.

Now the Act of 1910 does not require the railroads to put ladders on all their cars. They could follow up the former method of using hand-holds or grab irons. In a majority of cases they are still using grab irons or hand-holds and that is a compliance with the Acts of Congress. Indeed there are many cars that they could not use a ladder very well on. Nobody ever saw a ladder on a gondola car. But Congress by Section 2 of the Act of 1910 said to every railroad company that where a ladder was required they must have secure ladders and also hand-holds at the top of the ladder. It left it to the railroads to see on what cars ladders should be put but it said to the railroads that when they put ladders on they must be secure ladders and have hand-holds at the top of the ladders.

In the case at bar the Illinois Central Railroad Company had elected to equip its car with a ladder. The undisputed evidence here shows that this car was equipped with a ladder and Williams had hold of an insecure hand-hold on the roof. But the point I

want to make clear is that it is undisputed here that this car was equipped with a ladder and being so equipped, Section 2 required absolutely that the ladder should be safe and that there should be a secure hand-hold at the top of the ladder. That provision was never suspended. Congress never authorized the Interstate Commerce Commission to suspend that section of the Act for even a single hour after July 1st, 1911. And furthermore the Interstate Commerce Commission never attempted to suspend this Section 2. We need not go into the question here as to whether the Interstate Commerce Commission has under certain conditions power to suspend the operation of an Act of Congress. Congress never authorized the Commission to suspend Section 2. The Commission never attempted to suspend Section 2. Congress did authorize the Commission under Section 3 to give the railroads time in which to provide standard or uniform equipment. In Exhibits "A" and "B" hereto attached will be found portions of the orders made and which show clearly that the Interstate Commerce Commission construed the Act just as we construe it. No attempt was made to authorize a railroad company to run a car without a ladder, without a grab iron, without a hand-hold, without a sill-step, without a handbrake and without a running board. But Congress realized that uniformity was highly desirable in the interest of safety and the Commission has accordingly provided standards with which the railroad companies are to comply. For example: A brakeman working in the dark ought

to know whether the car that he is ascending has a hand-hold that is simply diagonal across the corner or whether there is a hand-hold running parallel with the side of the car and another running parallel with the end of the car. It is not material whether these two hand-holds are made out of one piece of iron at right angles to each other or whether they are made out of separate pieces of iron. Such a hand-hold is much safer than a diagonal piece of iron just across the corner of the car. The Interstate Commerce Commission has required all cars now to be equipped with hand-holds running parallel with the side of the car and the end of the car. No longer are they permitted to use a diagonal and this for the good and sufficient reason that the diagonal is not so safe. For example: A brakeman is coming down from a brake wheel. If it is snowing, or is icy or sleeting and you have only a diagonal piece of iron, when his foot is placed against the diagonal piece of metal there is greater danger that he will slip and fall than if you have a piece of metal that he can rest his foot against and running parallel with the side of the car. It is for this and other reasons that Congress authorized the Commission to standardize the equipment and it is for these reasons the Commission has standardized by the orders referred to in Exhibits "A" and "B."

VII.

In conclusion I submit that these railroad companies are wrong whether the right of Williams be

tested under the Act of 1893 as amended in 1903 or under the Act of 1910. The Act of 1893 required secure grab irons to be used by the men in coupling and uncoupling cars. The switching of a car is a part of the work of coupling and uncoupling quite often. Cars are coupled and uncoupled in the act of switching and it is absolutely essential to have a hand-hold on the roof. Did any member of this Court ever see a car with hand-holds at the corners of the car and no hand-hold on the roof? Did this Court ever see a car where a man didn't have a hand-hold between the brake wheel and the corner of the car where he had to get down? How could a man get from the brake-wheel down the side of the car unless there was a hand-hold on the roof? The absence of such a hand-hold would mean the slaughter of employes, and every railroad in the United States has construed the Act of 1893 as I am construing it. Everyone of them has hand-holds on the roof of the cars. So that if we were to rely on the Act of 1893 the judgment herein is right. And if it is under Section 2 of the Act of 1910 we are equally right. For that section positively requires every railroad company which equipped its cars with ladders instead of ordinary hand-holds to have them secure and in addition to the ladders to have a hand-hold on the roof. Even if the Commission had been authorized to suspend and had suspended Section 2 it would not help these railroad companies any in this case. The most they could claim then would be that they had five years in which to put on the ladders and the hand-holds.

But if they put the ladders and the hand-holds on sooner, then even under the order of the Commission they must be safe, of course. Could anybody contend that a railroad company before the five years expired could put an unsafe ladder and loose hand-hold on? This Court will indulge in no such absurdity. When ever the railroad company elects to put a ladder and a hand-hold on a car they must put it on safely and if it fails to do so it is liable civilly and criminally. There is no authority in the Acts of 1893, 1903, 1910 or in any order of the Interstate Commerce Commission to put on an insecure hand-hold or to maintain one.

In the opinion of the writer there is no merit whatever in the contention of the plaintiffs in error. These companies never had any defense in this action except as to the amount of damages. On the evidence in this case it was shown beyond question that they were liable civilly in this action and should have been prosecuted criminally by the government. They were entitled to defend as to the amount of damages and were afforded ample opportunity to make that defense and did so make it. But the damages have been settled by a jury, by the trial Court and the Supreme Court of Mississippi, and of course the amount of these damages is a question with which this Court is not concerned. I admit that if an instruction had been given in this case prescribing a wrong rule as to the measure of damages under an act of Congress that this Court could review the case and reverse it for the giving of a wrong instruction. But no

claim is made here and none was made in the Supreme Court of Mississippi that the instruction on damages in this case was wrong. The instruction of the trial Court on damages was drawn right along the main beaten paths. When a case has thus been tried and both parties have had a full and fair hearing, the writer believes it to be wholly unjustifiable for these companies, because of their financial ability so to do, to harass and annoy one of their employees who, without fault of his own, has sustained serious injuries and is awarded only a just and lawful verdict.

Respectfully submitted,

MICHAEL F. HARRINGTON,
Attorney for Defendant in Error.

EXHIBIT A.

This Contains All Parts of Standardization Order
Useful in the Williams' Case.

Order of the Interstate Commerce Commission,
March 13, 1911.

In Re Designating the Number, Dimensions, Location,
and Manner of Application of Certain
Safety Appliances.

Whereas by the third section of an act of Congress approved April 14, 1910, entitled "An act to supplement 'An act to promote the safety of employes and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with drivingwheel brakes, and for other purposes,' and other safety appliance acts, and for other purposes," it is provided, among other things, "That within six months from the passage of this act the Interstate Commerce Commission, after hearing, shall designate the number, dimensions, location, and manner of application of the appliances provided for by section two of this act and section four of the act of March second, eighteen hundred and ninety-three, and shall give notice of such designation to all common carriers subject to the provisions of this act by such means as the Commission may deem proper, and thereafter said number, location, dimensions, and manner of application as designated by said Commission shall remain as the standards of equipment

to be used on all cars subject to the provisions of this act, unless changed by an order of said Interstate Commerce Commission, to be made after full hearing and for good cause shown; and failure to comply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of this act: **Provided**, That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of cars actually in service upon the date of passage of this act;" and

Whereas hearings in the matter of the number, dimensions, location, and manner of application of the appliances, as provided in said section of said act, were held before the Interstate Commerce Commission at its office in Washington, D. C., on September 29th and 30th and October 7th, 1910, respectively; and February 27th, 1911;

Now, therefore, in pursuance of and in accordance with the provisions of said section three of said act, and superseding the Commission's order of October 13, 1910, relative thereto

It is ordered, That the number, dimensions, location, and manner of application of the appliances provided for by section two of the Act of April 14, 1910, and section four of the act of March 2, 1893, shall be as follows:

BOX AND OTHER HOUSE CARS.

Hand-Brakes.

Number: Each box or other house car shall be equipped with an efficient hand-brake which shall operate in harmony with the power-brake thereon.

The hand brake may be of any efficient design, but must provide the same degree of safety as the design shown on Plate A.

Dimensions: The brake-shaft shall be not less than one and one-fourth ($1\frac{1}{4}$) inches in diameter, of wrought iron or steel without weld.

The brake-wheel may be flat or dished, not less than fifteen (15), preferably sixteen (16), inches in diameter, of malleable iron, wrought iron or steel.

Location: The hand-brake shall be so located that it can be safely operated while car is in motion.

Running Boards.

Number: One (1) longitudinal running board.

On outside-metal-roof cars two (2) latitudinal extensions.

Dimensions: Longitudinal running boards shall be not less than eighteen (18), preferably twenty (20), inches in width.

Latitudinal extensions shall be not less than twenty-four (24) inches in width.

Location: Full length of car, center of roof.

On outside-metal-roof cars there shall be two (2) latitudinal extensions from longitudinal running-board to ladder locations, except on refrigerator cars where such latitudinal extensions can not be applied on account of ice hatches.

Manner of Application: Running-boards shall be continuous from end to end and not cut or hinged at any point: **Provided**, That the length and width of running-boards may be made up of a number of pieces securely fastened to saddle-blocks with screws or bolts.

The ends of longitudinal running-board shall be not less than six (6) nor more than ten (10) inches from a vertical plane parallel with the end of car and passing through the inside face of knuckle when closed with coupler-horn against the buffer-block or end-sill; and if more than four (4) inches from edge of roof of car, shall be securely supported their full width by substantial metal braces.

Running-boards shall be made of wood and securely fastened to car.

Sill-Steps.

Number: Four (4).

Dimensions: Minimum cross-sectional area one-half ($\frac{1}{2}$) by one and one-half ($1\frac{1}{2}$) inches, or equivalent, of wrought iron or steel.

Ladders.

Number: Four (4).

Dimensions: Minimum clear length of tread: Side ladders sixteen (16) inches; end ladders fourteen (14) inches.

Maximum spacing between ladder-treads, nineteen (19) inches.

Top ladder-tread shall be located not less than twelve (12) nor more than eighteen (18) inches from roof at eaves.

Spacing of side ladder treads shall be uniform within a limit of two (2) inches from top ladder tread to bottom tread of ladder.

Maximum distance from bottom tread of side ladder to top tread of sill-step, twenty-one (21) inches.

End ladder treads shall be spaced to coincide with treads of side ladders, a variation of two (2) inches being allowed. When construction of car will not permit the application of a tread of end ladder to coincide with bottom tread of side ladder, the bottom tread of end ladder must coincide with second tread from bottom of side ladder.

Hard-wood treads, minimum dimensions one and one-half ($1\frac{1}{2}$) by two (2) inches.

Iron or steel treads, minimum diameter five-eighths ($\frac{5}{8}$) of an inch.

Minimum clearance of treads, two (2), preferably two and one-half ($2\frac{1}{2}$) inches.

Location: One (1) on each side, not more than eight (8) inches from right end of car; one (1) on each end, not more than eight (8) inches from left side of car; measured from inside edge of ladder-stile or clearance of ladder treads to corner of car.

Manner of application: Metal ladders without stiles near corners of cars shall have foot guards or upward projections not less than two (2) inches in height near inside end of bottom treads.

Stiles of ladders, projecting two (2) or more inches from face of car, will serve as foot guards.

Ladders shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside (when possible) and rivited over, or with not less than one-half ($\frac{1}{2}$) inch rivets. Three-eighths ($\frac{3}{8}$) inch bolts may be used for wooden treads which are gained into stiles.

Roof-Handholds.

Number: One (1) over each ladder.

One (1) right-angle hand-hold may take the place of two (2) adjacent specified roof-handholds,

provided the dimensions and locations coincide, and that an extra leg is securely fastened to car at point of angle.

Dimensions: Minimum diameter, five-eighths ($\frac{5}{8}$) of an inch, wrought iron or steel.

Minimum clear length, sixteen (16) inches.

Minimum clearance, two (2), preferably two and one-half ($2\frac{1}{2}$) inches.

Location: On roof of car: One (1) parallel to treads of each ladder, not less than eight (8) nor more than fifteen (15) inches from edge of roof, **except** on refrigerator cars where ice hatches prevent, when location may be nearer edge of roof.

Manner of application: Roof-hand-holds shall be securely fastened with not less than one-half ($\frac{1}{2}$) inch bolts with nuts outside (when possible) and riveted over, or with not less than one-half ($\frac{1}{2}$) inch rivets.

Roof-Handholds.

Number: One (1) over each ladder.

Where stiles of ladders extend twelve (12) inches or more above roof, no other roof-handholds are required.

Couplers.

Locomotives shall be equipped with automatic

couplars at rear of tender and front of locomotive.

Cars of construction not covered specifically in the foregoing sections, relative to hand-holds, sill-steps, ladders, hand-brakes and running-boards may be considered as of special construction, but shall have, as nearly as possible, the same completement of hand-holds, sill steps, ladders, hand brakes and running boards as are required for cars of the nearest approximate type.

"Right" or "Left" refers to side of person when facing end or side of car from ground.

To provide for the usual inaccuracies of manufacturing and for wear, where sizes of metal are specified, a total variation of five (5) per cent below size given is permitted.

And it is further ordered, That a copy of this order be at once served on all common carriers, subject to the provisions of said act in a sealed envelope by registered mail.

EXHIBIT B.

Order of the Interstate Commerce Commission,
March 13, 1911.

In the matter of the extension of the period within which common carriers shall comply with the requirements of an act entitled, "An act to supplement 'an act to promote the safety of employes and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotive with drivingwheel brakes and for other purposes,' and other safety appliance acts, and for other purposes," approved April 14th, 1910, as amended by "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1912, and for other purposes," approved March 4, 1911.

Whereas, pursuant to the provisions of the act above stated, the Interstate Commerce Commission, by its orders duly made and entered on October 13, 1910, and March 13, 1911, has designated the number, dimensions, location, and manner of application of the appliances provided for by section 2 of the act aforesaid and section 4 of the act of March 2, 1893 as amended April 1, 1896, and March 2, 1903, known as the "Safety Appliance Acts;" and whereas the matter of extending the period within which common carriers shall comply with the provisions of section 2 of the act first aforesaid being under consideration, upon full hearing and for good cause shown:

It is ordered, That the period of time within which said common carriers shall comply with the provisions of section 3 of said act in respect of the equipment of cars in service on the 1st day of July, 1911, be, and the same is hereby, extended as follows, to-wit:

Freight-Train Cars.

(a) Carriers are not required to change the brakes from right to left side on steel or steel-under-frame cars with platform end sills, or to change the end-ladders on such cars, except when such appliances are renewed, at which time they must be made to comply with the standards prescribed in said order of March 13th, 1911.

(b) Carriers are granted an extension of five years from July 1, 1911, to change the location of brakes on all cars other than those designated in paragraph (a) to comply with the standards prescribed in said order.

(c) Carriers are granted an extension of five years from July 1, 1911, to comply with the standards prescribed in said order in respect of all brake specifications contained therein, other than those designated in paragraphs (a) and (b), on cars of all classes.

(d) Carriers are not required to make changes to secure additional end-ladder clearance on cars that have ten or more inches end-ladder clearance,

within thirty inches of side of car, until car is shopped for work amounting to practically rebuilding body of car, at which time they must be made to comply with the standards prescribed in said order.

(e) Carriers are granted an extension of five years from July 1, 1911, to change cars having less than ten inches end-ladder clearance, within thirty inches of side of car, to comply with the standards prescribed in said order.

(f) Carriers are granted an extension of five years from July 1, 1911, to change and apply all other appliances on freight-train cars to comply with the standards prescribed in said order, except that when a car is shopped for work amounting to practically rebuilding body of car, it must then be equipped according to the standards prescribed in said order in respect to hand-holds, running boards, ladders, sill steps, and brake staffs: **Provided,** That the extension of time herein granted is not to be construed as relieving carriers from complying with the provisions of Section 4 of the Act of March 2, 1893, as amended April 1, 1896, and March 2, 1903.

(g) Carriers are not required to change the location of handholds (except end handholds under end sills), ladders, sill steps, brake wheels, and brake staffs on freight train cars where the appliances are within three inches of the required location, except that when cars undergo regular repairs they must then be made to comply with the standards prescribed in said order.

Passenger-Train Cars.

(h) Carriers are granted an extension of three years from July 1, 1911, to change passenger-train cars to comply with the standards prescribed in said order.

Locomotives, Switching.

(i) Carriers are granted an extension of one year from July 1, 1911, to change switching locomotives to comply with the standards prescribed in said order.

Locomotives, Other Than Switching.

(j) Carriers are granted an extension of two years from July 1, 1911, to change all locomotives of other classes to comply with the standards prescribed in said order.

IN THE
SUPREME COURT OF THE UNITED STATES

No. 637.

OCTOBER TERM, 1916.

ILLINOIS CENTRAL RAILROAD CO., ET AL.,
PLAINTIFFS IN ERROR,

v.

GEORGE R. WILLIAMS,
DEFENDANT IN ERROR.

TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

REPLY BRIEF FOR DEFENDANT IN ERROR.

I.

Judgement Sustained on Common Law Grounds.

This suit was filed and prosecuted in the Trial Court on the Safety Appliance Act, the right of action being based upon the Supplemental Act of April 14, 1910; and, in presenting to this Court the theory that the Supreme Court of the State of Mississippi may have affirmed the case on common law grounds, we, in no manner, abandoned, or changed any position which we have taken in reference to the fact that the suit was based upon the Safety Appliance Act. Upon the other hand, we have consistently held to that view, and there has been no change of position from the trial in the Lower Court to the present time.

Notwithstanding all of this, it was perfectly competent for the Supreme Court of the State of Mississippi, looking through the record, to say that, although the action was based and prosecuted under the Federal Appliance Act, taking the record as an entirety, irrespective of any errors which may have been committed thereunder, it would sustain the judgment as a common

law action, and viewed as a common law action alone, substantial justice had been done.

Counsel for plaintiffs in error attack this position in the following language, page 3, Brief on Merits:

"In an action by a servant against his master to recover damages for injuries caused by defective or dangerous appliances or places, it must be alleged in the complaint that the master knew, or ought to have known of the alleged defects. Of course, it is perhaps not necessary that this appear by direct averment, but it must appear as a charge, either by direct averment or from the facts stated." (Citing 26 Cyc., 1390) "This above allegation is neither directly or indirectly made in the complaint."

In this respect, counsel for plaintiffs in error are entirely mistaken. The declaration, after charging the insecure and unsafe condition of the equipment complained of, contains the following averment:

"That sad defective condition was known to defendants, or could have been discovered by reasonable diligence, but was unknown to plaintiff." (See printed record, page 4.)

It is not contended that the declaration does not sufficiently charge negligence. The declaration is sufficiently broad to uphold and maintain a common law action, and in our brief on the merits, we have directed the attention of the Court to the evidence tending to support the same. In making this point, however, we, in no manner, change or alter our views in reference to the liability of the plaintiffs in error under the Safety Appliance Act.

If the Supreme Court of Mississippi, however, could have affirmed this judgment without deciding any of the Federal questions raised or passing upon the Safety Appliance Act in any respect, then, this Court is without jurisdiction, and the motion to affirm or

dismiss should be sustained. Not only that, but as we have already shown the Court by citation of authorities, the burden devolves upon plaintiffs in error to show that a decision of a Federal question, or, rather, of the Federal question relied upon, by the Supreme Court of the State of Mississippi was essential to the judgment affirmed. We have in our brief on the merits directed the attention of the Court to the authorities sustaining this position.

II.

Counsel for plaintiffs in error in their brief on the merits in this case, for the first time contend that no ladder was required by the Interstate Commerce Commission to be upon the car upon which defendant in error was injured, and, therefore, plaintiffs in error were not under obligation to have and maintain a secure hand-hold or grab-iron on the roof of the car at the top of the ladder. It might be sufficient for the purposes of this argument to say that this question was never raised, either in the Trial Court, in the Supreme Court of the State of Mississippi, nor was it raised in the original brief filed by counsel for plaintiffs in error, but is suggested only in the last brief filed by counsel. However, counsel for plaintiffs in error have again adopted a totally erroneous construction of the statute, a construction to which they are driven in their extremity. Section 2 of the Act provides specifically that all cars *having ladders* shall be equipped with hand-holds or grab-irons on the roof of the cars, at the top of the ladder. The meaning of Section 2 in this respect is that all cars requiring secure ladders and secure running boards should be equipped therewith. This requirement might arise either out of the nature of the car, the condition of the service to be performed by it, or the exigencies of the occasion, or it might be required by some order of the Interstate Commerce Commission. The Act, however, aside from all this, contained the further provision that all cars having ladders should also be equipped with handholds or grab-

irons on top of the car, at the top of the ladder. It was not the intention of Congress that only cars required by the Interstate Commerce Commission to have secure ladders should be supplied with such hand-holds or grab-irons. If such had been the congressional intent, it could have been expressed much more explicitly. ~~Counsel for the plaintiffs in error would have the provision construed as if it read as follows: "All cars must be equipped with secure sill steps and sufficient hand-brakes. All cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and shall also be equipped with secure hand-holds or grab-irons on their roofs, at the top of the ladders."~~

~~If such had been the congressional intention, this language probably and doubtless would have been in the statute,~~ but the congressional idea was that railroads were already using ladders; that they were in general use on April 14th, 1910; that a ladder on the side of a car was an invitation to an employee to use the same; that an employee, in the performance of his duty, finding a ladder at the side of a car would not be expected to first ascertain whether or not the ladder was required, but upon the other hand, had the right to assume that there would be a secure grab-iron or hand-hold at the top of such ladder. A railroad company equipping a car with a ladder leading to the top, would be estopped to say that it was not required to put a grab-iron or hand-hold at the top of the car, because the ladder itself was not only an invitation but a direction to the employee to perform his duties through such route, and the safety of such route in the performance of the duties of the employee was the idea which Congress had in mind. Congress knew that in preparing specifications for cars that the Interstate Commerce Commission would require ladders, and Congress also knew that at that time there were many cars in use having ladders thereon by which employees were expected to ascend; and, therefore, Congress used the all comprehensive term: "All cars having ladders

shall also be equipped with secure hand-holds or grab-irons on their roofs at the top of such ladders."

The declaration in this case alleges that the car in question did have a ladder leading to the top, and that it was the duty of the plaintiffs in error to provide a hand-hold or grab-iron on the roof of the car. (Printed transcript, page 5.) We have already directed the attention of the Court to the testimony, and, in fact it is undisputed, that the car in question had a secure ladder, and that the grab-iron or hand-hold was defective, and that defendant in error was injured, as a result thereof.

III.

At the trial of this case in the State Court, the plaintiffs in error did not plead the order of the Interstate Commerce Commission, nor any extension granted by it. But on appeal, however, to the Supreme Court, counsel for plaintiffs in error in their briefs, set out the various orders of the Interstate Commerce Commission, and contended that by reason thereof, the Act of April 14, 1910, was extended in its operation until July 1st, 1916. In this Court, in the original brief, counsel for plaintiffs in error have adopted the order of the Interstate Commerce Commission, the specifications, etc., and based their argument thereupon. So far as we are concerned, they may take either horn of the dilemma: that the orders of the Interstate Commerce Commission either are or are not before the Court. Counsel upon both sides, in their brief before the Supreme Court of the State of Mississippi, made elaborate arguments thereon, and the same course has been adopted in this Court, but we will not at this late day enter into any argument with counsel for plaintiffs in error as to whether the order of the Interstate Commerce Commission is properly before the Court or not, further than to say that, the same being an order, and the orders in question being of such great public concern, and being made in pursuance of a Federal Statute, and having to a certain extent the force of law, that it might therefore be assumed that the Court would take

judicial knowledge thereof, and we think this position is correct, and counsel upon both sides have evidently thought so, because the orders of the Interstate Commerce Commission have been availed of by counsel for each of the litigants.

Suppose, for instance, however, we leave the orders of the Interstate Commerce Commission out. Where will plaintiffs in error find themselves? Section 2 of the Act made it the positive duty of carriers on and after July 1st, 1911, to provide all cars having ladders, with grab-irons or hand-holds at the tops of the cars. Section 3 of the Act made it the duty of the Interstate Commerce Commission to provide standards of equipment for all time, until changed by them. In the absence of any evidence to the contrary, it would be assumed by this Court that the Interstate Commerce Commission performed its duties and provided a standard. There was no extension of time beyond July 1st, 1911, provided in Section 3, of the Act, or any other section thereof, and if the order of the Interstate Commerce Commission should be excluded from the record, as is now for the first time contended, then there was no extension of time for compliance with Section 3 of the Act of 1910, for any cars, beyond July 1st, 1911; but, upon the other hand, undisputedly and unquestionably, it will be the duty of the carriers to have, provide and maintain the equipment called for under Section 2 of the Act. The only authority whatsoever for making any extension of time when it should be the duty of the railroad companies to standardize their cars is found in the grant of power to the Interstate Commerce Commission, in Section 3 of the Act. There will be no presumption that the Interstate Commerce Commission made any extension of time, and in such case it would be the absolute duty of carriers to have their cars standardized by July 1st, 1911, and certainly, beyond any peradventure of doubt, there could be no excuse for a failure to have the equipment secure and safe. Counsel for plaintiffs in error in the Supreme Court of the State of Mississippi based their

entire grounds for reversal upon the position that the Interstate Commerce Commission, in allowing carriers five years within which to equip certain cars according to the standardized specifications, suspended the entire Act until July 1st, 1916; and that argument was elaborately urged in this Court in counsel's original brief. We think we fully met the argument by demonstrating that before plaintiffs in error could avail themselves of any immunity afforded by Section 3 of the Act, it became their duty to plead and prove (a) that the car in question was in use July 1st, 1911, etc. Counsel for plaintiffs in error seem to be impressed with the force of this argument, and now, in their last brief, totally abandon the original position assumed, abandon the order of the Interstate Commerce Commission, and say that the orders of the Interstate Commerce Commission are not properly before the Court at all. We trust that we may, without being discourteous to counsel, or appearing frivolous, suggest that like the proverbial "incense pot" the orders of the Interstate Commerce Commission have become uncomfortable. In this connection, we might call the attention of the Court to the fact that the orders of the Interstate Commerce Commission (see *Thornton*, page 490) did require ladders for cars like the one upon which defendant in error was injured, and also provided the specifications of the roof hand-holds. Cars in use July 1st, 1911, unless repaired in the meantime, provided their equipment was more than three inches from the standard, had five years within which to comply with the standard, but for all this record shows, the car upon which the defendant in error was injured may have been a car built since July 1st, 1911, or it may have been a car the equipment of which was not more than three inches from the standard, or it may have been one repaired in the meantime. In either event, under our view of the case, irrespective of any extension which the Interstate Commerce Commission was permitted to make under Section 3, of the Act, it would have been the absolute duty of the plaintiffs in error to provide safe and secure equipment.

IV.

Counsel for plaintiffs in error take the position that the equipment required by the Act of April 14, 1910, was equipment which cars did not have upon them and would have to be provided, and therefore, the Interstate Commerce Commission did not contemplate that carriers could comply by July 1st, 1911. In this, counsel are mistaken. The Act requires secure sill steps and hand-brakes, both of which were in general use; the Act did not absolutely require ladders and running boards under all circumstances, although both ladders and running boards were in general use on cars at that time. The Act did provide, however, that all cars having ladders, that is to say, having ladders on April 14th, 1910, should by July 1st, 1911, have such ladders secure and safe, with grab-irons or hand-holds on the roof of the car at the top of the ladder. Cars in use July 1st, 1910, which did not have upon them ladders or sill steps were required by the order of the Interstate Commerce Commission, if box, or other house cars, to provide ladders and grab-irons, etc., and such cars had five years within which to provide this equipment, unless such cars underwent repairs in the meantime. It is undisputed that the car on which defendant in error was injured had upon it a ladder. Necessarily, then, it was the duty of the plaintiffs in error to provide a hand-hold or grab-iron on the roof, at the top of the car.

V.

On page 28 of the brief on the merits, of counsel for plaintiffs in error, the following language is used:

"And in this connection we may further suggest that it should be noted with some interest that under the order entered by the Commission, above referred to, that Section 4, of the Act of 1893, is expressly excluded from the extension of time granted. If, therefore Section 2 then being under consideration by the Commission was not to be included in the

extension of time, why was it that the Commission did not clearly express it, as it did in relation to Section 4, of the Act of 1893?"

The answer is very obvious. Counsel is referring in the above quoted paragraph to Paragraph "F" *Thornton*, page 512, being a portion of the order of the Interstate Commerce Commission, providing for the extension of time within which carriers should comply with the standard specifications as to certain cars, not as to all cars, but as to cars in use July 1st, 1911. Paragraph "F" above referred to, gave cars in use July 1st, 1911, five years in which to standardize the equipment required by Section 2 of the Act. In other words, cars using the equipment for the first time required by section 2 of the Act would have five years, under certain conditions and modifications not necessary to note here, to make the same comply with the standards, but as to that portion of the equipment already provided by Section 4 of the Act of March 2nd, 1893, it would be reasonably presumed by Congress that the equipment was already much nearer standard. In other words, Section 4, of the Act of March 2nd, 1893, dealt only with grab-irons and hand-holds on the sides and ends of the cars. This equipment was required by the Act of 1893, and on April 14, 1910, all cars were necessarily provided with this equipment. There was no complicated standard, in fact it may be assumed that this equipment was more nearly standardized, which fully accounts for the difference, since the carriers had from March 2, 1893, to April 14, 1910, to make this equipment safe. But by the Act of 1910, Congress was requiring carriers for the first time to use equipment which they had not been obliged to use, such as ladders. It is true that ladders had, since March 2nd, 1893, become in very extensive and general use, but had not been required and had not, therefore, approached so near a uniform standard as would necessarily be expected of the hand-holds or grab-irons on the sides and ends of cars which had been required since March 2nd, 1893.

VI.

Counsel for plaintiffs in error, in their brief on the merits, contend for the first time, that it was necessary for defendant in error to allege and prove that ladders were required on the car in question by the order of the Interstate Commerce Commission. We have fully answered that argument in a preceding paragraph of this brief. We desire to suggest further, however, that even if their position was correct, and it is not correct, it would have been the duty of the plaintiffs in error to have made the point in the Lower Court. Suppose that the plaintiffs in error, at the conclusion of the evidence in the Court below, had made the point now for the first time made. Conceding for the sake of argument that the point be sound, which, however, we do not concede, it would have been a very easy matter for defendant in error to have introduced the order of the Interstate Commerce Commission, which undisputedly required ladders on such cars.

The identical question was passed upon by this Court in the case of *San Antonio and Arkansas Pass Railroad Company vs. Wagner*, decided by this Court on June 5th, 1916. In that case, which was a suit brought ostensibly under the Federal Employers' Liability Act, there was a failure on the part of the plaintiff to prove that the employer was engaged in interstate commerce. The point was not made in the trial Court, but the point was for the first time raised on appeal. This Court declined to reverse on that ground, saying:

"We shall decide the case upon that assumption, although we find nothing in the record to show that in fact the plaintiff was injured in interstate commerce at the time he was injured. The omission may have been due to oversight that would have been corrected if the point had been raised by the present plaintiff in error in the State Courts."

We respectfully submit, however, that defendant in error made out a *prima facie* case to show that the plaintiffs in error were engaged in interstate commerce;

that the duties of defendant in error required him to ascend the ladder on the car provided and used by them, and that there was a defective handhold or grab-iron on the roof of the car, at the top of such ladder.

On page 33 of their brief, counsel for plaintiffs in error cite the cases of:

Terre Haute Railroad Company vs. McCorkle,
140 Ind., 613.

Indianapolis & G. T. Co. v. Foreman, 69 N.
E., 669.

American Rolling Mill Co. v. Hollinger, 69,
N. E., 460.

New Bedford v. Higdon, 117 Mass., 445.

These cases all fall within the rule announced in our brief on the merits, under Title, "Affirmative Defense," pages 26 to 40. The defendant in error brought this case within the terms of the statute when he alleged that the plaintiffs in error were engaged in interstate commerce, used the car in question, that his duties required him to go upon the top of it, that the car had a ladder, and that the hand-hold or grab-iron on the roof of the car at the top of the ladder was defective and insecure.

We respectfully submit that the judgment of the Court below should be affirmed, and that damages should be awarded to the defendant in error, on account of this appeal, under Section 2, Rule 23, of this Court.

WILLIAM H. WATKINS,

Attorney for Defendant in Error.

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**IN THE
SUPREME COURT OF THE UNITED STATES**

No. 637.

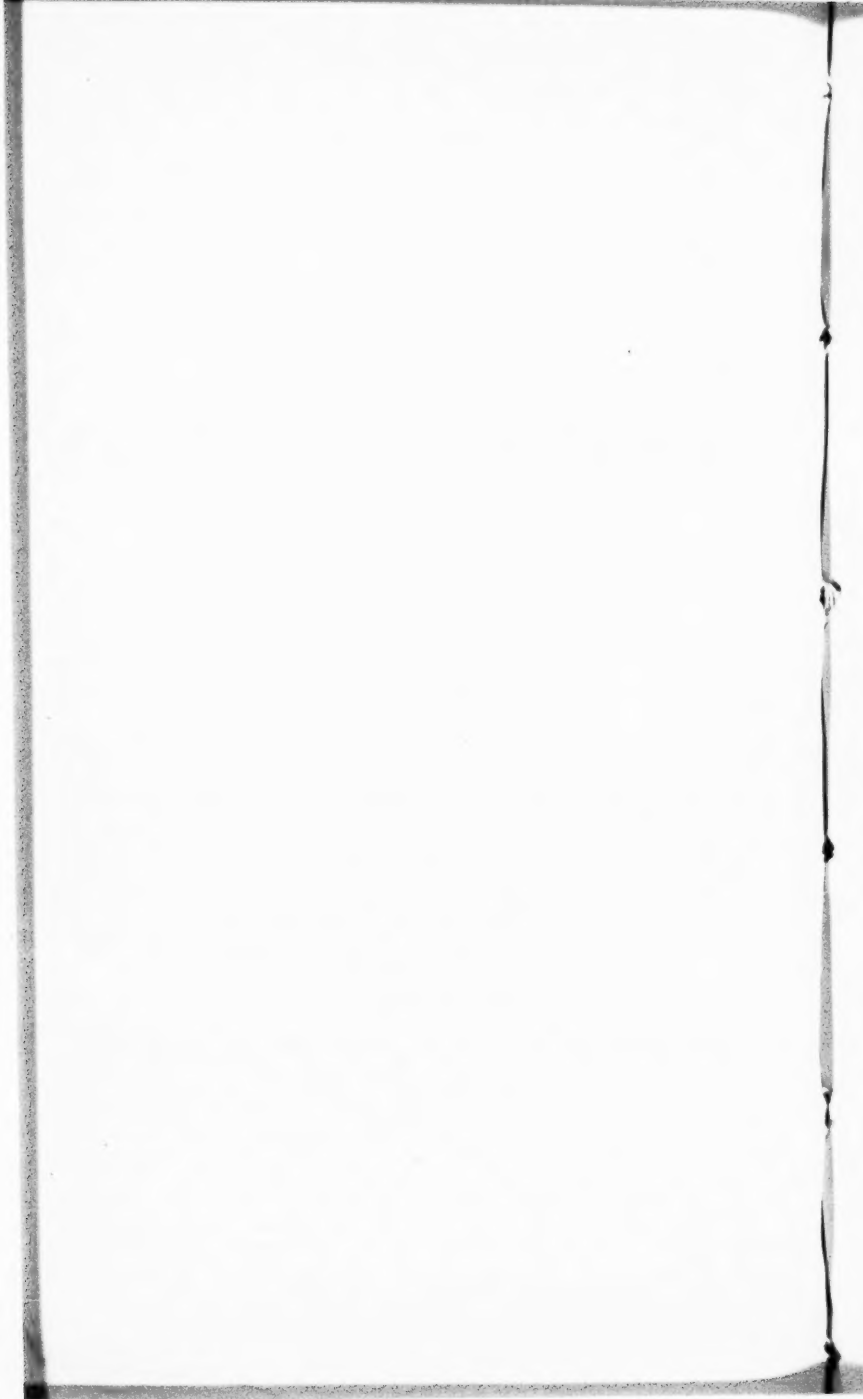
OCTOBER TERM, 1916.

**ILLINOIS CENTRAL RAILROAD CO., ET AL.,
Plaintiffs in Error.**

VERSUS

**GEORGE R. WILLIAMS,
Defendant in Error.**

**TO THE SUPREME COURT OF THE STATE OF
MISSISSIPPI.**



BRIEF ON THE MERITS FOR DEFENDANT IN ERROR.

The facts in this case have been fully stated in the briefs for defendant in error on motion to dismiss or affirm, and it will, therefore, not be necessary to re-state the facts here. The material facts necessary to a construction of the Safety Appliance Act of April 14, 1910, are sufficiently admitted in the statement of the case on the part of counsel for the plaintiffs in error, and, therefore, without any further statement of the case, we will present to the Court the concrete question of law relied on by counsel for plaintiffs in error for a reversal of this judgment.

It is the contention of counsel for plaintiffs in error that the Act of April 14, 1910, being an amendment to the Safety Appliance Act of 1893, was not in effect upon the 15th day of March, 1913, when the defendant in error received the injury sued for. If the Act was in effect in its entirety, or if the Act, for any purpose, was in effect March 15, 1913, according to the express admissions in brief of counsel for plaintiffs in error, the judgment of the Court below should necessarily be affirmed. Section 2, of the Act under discussion is in the following language:

"That on and after July first, 1911, it shall be unlawful for any common carrier subject to the provisions of this Act to haul, or permit to be hauled or used on its line any car subject to the provisions of this Act not equipped with appliances provided for in this Act, to-wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand-holds or grab-irons on their roofs at the top of such ladders: *provided*, that in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose."

The section is clear and unambiguous in its provisions. It created the legal duty upon the part of the plaintiffs in error, after July 1, 1911, to have and maintain secure hand-holds on the top of the car in question for the purposes of the employment of the defendant in error.

This Court said in the case of *Tex. & Pac. Ry. Co. v. Rigsby*, decided April 15, 1916:

"A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied, according to a doctrine of the common law expressed in 1 Comyn's Dig., title, '*Action upon Statute*' (F), in these words: 'So, in every case, where a statute enacts or prohibits a thing for the benefit of a person, he shall have a remedy upon the same statute for the thing enacted for his advantage, or for the recompense of a wrong done him contrary to said law.' (Per Hold, Ch. J., Anonymous, 6 Mod. 26, 27). This is but an application of the maxim, *Ubi jus ibi remedium*. See 3 Bl. Com. 51, 123; *Couch v. Steele*, 3 El. & Bl., 402, 411, 23 L. J. Q., B. N. S., 121, 125, 2 C. L. R. 940, 18 Jur. 515, 2 Week Rep. 170."

And we, therefore, find that the statute creating a positive duty upon the part of the plaintiffs in error necessarily imposed liability in favor of the defendant in error for the wrongs and injuries complained of. This Court has frequently said that a plain and unambiguous statute is its own construer, and this principle of law may well be invoked in the present discussion. The statute provides in express terms that on and after July 1, 1911, interstate carriers should provide and maintain secure handholds on the roof of their cars at the top of the ladder. The creation of this duty by the statute in question imposed liability upon the plaintiffs in error for a breach thereof. Such are the plain and express enactments of Section 2, of

the statute under discussion. We, therefore, affirm that the section is its own construer, and unless there is some other provision contained in a subsequent section of the Act modifying the plain and unambiguous provisions of Section 2, then the Act is in no manner susceptible of the construction sought to be placed thereupon by counsel for plaintiffs in error.

Finding that Section 2 is plain and unambiguous in its provisions, creating a positive duty hereinbefore stated, and imposing liability by reason thereof for a breach of such duty, let's analyze each subsequent section, and see if there is any modification of the language so carefully used by Congress in Section 2, of the Act.

(a) Section 3 of the Act is a standardizing provision of the Act in question, providing that within six months after the passage of the Act in question, that is to say, within six months after April 14, 1910, the Interstate Commerce Commission should designate the number, dimensions, location, &c., of the appliances required by Section 2, of the Act. The section then continues:

"And thereafter, said number, location, dimensions and manner of application, as designated by said Commission, shall remain as the standards of equipment to be used on all cars subject to the provisions of this Act."

The Section then provides:

"That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of cars actually in service upon the date of the passage of this Act."

We find nothing in Section 3 to nullify or in any manner modify the express provisions of Section 2. By Section 2, Congress made it the duty of the interstate carriers by July 1, 1911, to make the appliances

referred to in the Section secure and safe. Congress knew that it was not performing its full duty in merely making the equipment safe; that there were in use at that time by the various railroad companies many standards of equipment, which, when in good repair, were perfectly secure and safe; and, therefore Congress was not satisfied with the provision of Section 2 that the equipment should be made safe and secure, but decided to go a step further and require of interstate railroad companies to construct their equipment according to certain standards to be adopted by the Interstate Commerce Commission. Therefore, Section 3 was enacted, not for the purpose of, or in any manner modifying or changing the effect of Section 2 but for the purpose of standardizing the safe and secure equipment provided by Section 2. This is all made very clear by a study of the Section in its entirety. The law makers contemplated that prior to the time the Act went into effect, the specifications of standard equipment would be adopted by the Interstate Commerce Commission. They also contemplated that all new cars constructed after the standards were adopted would necessarily be made to conform to the specifications provided by the Interstate Commerce Commission. It was a well known fact, however, that as to cars in use April 14, 1910, at the time of the passage of the Act, it would be impossible to standardize such cars within the period which might elapse between the adoption of the standards by the Interstate Commerce Commission and July 1, 1911; therefore, not for the purpose of relieving carriers of any liability for unsafe or insecure appliances but for the purpose of giving carriers time to comply with the standard provided by Section 3 of the Act, and in order to relieve them from the penalty provided for a failure to comply therewith, Section 3 contains the provision hereinbefore quoted, giving the Interstate Commerce Commission power and authority to extend the time when carriers should comply with Section 3 of the Act, not as to all cars, but as to cars in use at the time of the passage of

the Act. The reason of this provision is so obvious as to need no further discussion. There was no intention upon the part of Congress to relieve the carriers under Section 3 of any remedial liability in favor of an employe in having unsafe or insecure appliances in violation of Section 2, but the provision was intended for carriers to transfer the equipment on their old cars to the standards. Congress knew that this would require some time as to these old cars. We, therefore, state that there is nothing in Section 3 modifying or in any manner affecting the plain and unambiguous provisions contained in Section 2 of the Act. The Section contains the following language:

"That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this section."

Counsel for plaintiffs in error would have the Court construe the Section as if it read as follows:

"That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this Act."

It will be noticed that the carefully chosen language used by the law-makers in this instance shows that if it had been the intention of Congress to confer power upon the Interstate Commerce Commission to extend the time for the enforcement and compliance with the entire Act, it would have used appropriate language. Upon the other hand, the language used indicates a well defined intention upon the part of the law-making body that Section 2 should go into effect July 1, 1911, but when it came to standardizing cars in use April 14, 1910, that the Interstate Commerce Commission should have authority to extend the time. And, in this connection, it might be proper to call the attention of the Court to the difference between the provisions of the Act in question and the Act of March

2, 1893. In that instance, Congress gave to the Interstate Commerce Commission power and authority to extend the time within which any carrier might comply with the provisions of the Act, Section 7 being as follows:

"That the Interstate Commerce Commission may, from time to time, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this Act."

The difference in the language used plainly indicates the difference in the congressional intention. This intention is further evidenced by the fact that upon March 4, 1911, Congress passed a subsequent Act, enlarging the powers of the Interstate Commerce Commission to extend the time within which certain carriers should comply with the provisions of Section 3, of the Act. The Supplemental Act is Section 8620 of the United States Compiled Statutes of 1913, which is as follows:

"The jurisdiction of the Interstate Commerce Commission to extend the period within which any common carrier shall comply with the provisions of Section 3 of the Act, entitled, 'An Act to supplement "An Act to promote the safety of employes and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," and other safety appliance Acts, and for other purposes,' approved April 14, 1910, shall apply to cars actually placed in service between the date of the passage of said Act and the first day of July, 1911, in the same manner and to the same extent that it applies to cars actually in service upon the date of the passage of said Act."

The effect of that Act was to confer upon the Interstate Commerce Commission authority to extend the time when all cars in use July 1, 1911, should comply with Section 3, of the Act of April 14, 1910. The Act

is especially significant in that it only confers authority upon the Interstate Commerce Commission to extend the time within which a carrier subject to the provisions of the Act shall comply with *Section 3 of the Act*. Neither in the original Act of 1910 nor in the supplemental Act is there any power given, express or implied, upon the part of the Interstate Commerce Commission to extend the time when *Section 2* would go into effect, or extend the period within which any carrier should comply with the provisions thereof. The power conferred upon the Interstate Commerce Commission to grant an extension was by special congressional legislation confined and limited to certain cars, that is to say, cars in use April 14, 1910, and by the supplemental Act, cars in use at the time the Act should go into effect July 1, 1911. If the Act was not to go into effect until the Interstate Commerce Commission should make an order fixing the time when it should be complied with, why was there any occasion for Section 2 of the Act, or why was there any occasion for the Act of March 4, 1911, each of them being useless and idle?

(b) Section 4 of the Act of April 14, 1910, in no manner changes the express provisions of Section 2, of the Act under discussion. Upon the other hand, that section provides a penalty for violation of the Act of April 14, 1910, relieves the carrier of the penalty under a certain state of facts, that is to say, whenever a carrier should have appliances which were safe and secure and the same should become defective while in transportation, the equipment should be hauled to the nearest available point where such car might be repaired without incurring the penalty provided in the Act. However, Congress was careful to reserve to the employe the remedial provision provided in the Act, doing so in the following language:

"And nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employe, caused to such employe by reason of or in connection with the moving or hauling of such car, with equipment

which is defective or insecure, or which is not maintained in accordance with the requirements of this Act."

Not only does Section 4 of the Act in question contain nothing modifying the plain and unambiguous provisions of Section 2, but, upon the other hand, it contains an express provision carefully guarding the rights of employes to enforce the liability imposed by Section 2 of the Act under discussion. This was made very plain in the case of *Tex. & Pac. R. R. Co. v. Rigsby*, *supra*, where the following language was used:

"It is argued that the statute does not apply except when the car is in use for transportation at the time of the injury to the employe, and that since it does not appear that the car in question was in bad order because of any negligence on the part of the railway company, and it was being taken to the shops for repairs at the time of the accident, there is no liability for injuries to an employe who had notice of its bad condition and was engaged in the very duty of taking it to the shop. This is sufficiently answered by our recent decision in the case of *Great Northern R. R. Co. v. Olos*, 239 U. S., 349, where it was pointed out that although Paragraph 4, of the Act of 1910 relieves the carrier from the statutory penalty while a car is being hauled to the nearest railroad point for repairs, it expressly provides that it shall not be construed to relieve the carrier of liability in a remedial action for the death or injury of an employe caused by or in connection with the moving of a car with defective equipment."

(c) Nor does Section 5 of the Act contain any provision modifying the requirements of Section 2 of the Act; upon the other hand, Section 5 contains the following provision:

"That, except within the limits specified in the preceding section of this Act, the movement of a car with defective or insecure equipment without incurring the penalty provided by the statute, but shall in all other respects be unlawful."

(d) Section 6 makes it the duty of the Interstate Commerce Commission to enforce the provisions of the Act in question.

Construction.

It might be well to examine for a moment the construction which has been placed upon this Act at the time of, during and since its passage:

(A) *After the Passage of the Act.*

After the passage of the Act of April 14, 1910, March 4, 1911, Congress passed the Act now found Section 8620, United States Compiled Statutes of 1913, which shows upon its face that the Congress of the United States never intended to confer upon the Interstate Commerce Commission any authority to postpone the time within which Section 2 of the Act of April 14, 1910, should go into effect, nor the time within which a carrier should comply with the provisions thereof. Upon the other hand, the Act contains reference to and makes provision only for the Interstate Commerce Commission's extending the time within which carriers should comply with Section 3 of the Act, and not with Section 2. There is not a syllable either in the original Act or in the Supplemental Act, both of which should be construed together, indicating any intention upon the part of Congress that the provisions of Section 2 should in any manner be altered, modified or extended beyond July 1, 1911, as to any cars whatsoever. Section 3 of the Act of April 14, 1910, had given the Interstate Commerce Commission authority to extend the time within which cars in use at the time of the passage of the Act should be made to conform to the standards, and since the standards were not adopted until March 1, 1911, it was considered but fair that the Interstate Commerce Commission should have the authority to extend the time within which carriers should comply with Section 3 as to cars in actual use to the time the Act went into effect.

(B) **Construction by the Interstate Commerce Commission.**

We find that the Interstate Commerce Commission has uniformly placed the same construction upon the Acts in question which we contend for. Upon the 13th day of March, 1911, the Interstate Commerce Commission, in pursuance of Section 3, of the Act of April 14, 1910, provided the standard of equipment referred to therein. The standards are full and complete, and will be found in *Thornton*, pages 462-510.

After adopting the standard equipment, the Interstate Commerce Commission then undertook to extend the time within which carriers should comply with Section 3 of the Act as to cars in use July 1, 1911. On page 511, quoting from the order extending the time within which carriers should comply with Section 3 of the Act as to certain cars, the following language is used:

"It is ordered that the period of time within which said common carriers shall comply with the provisions of Section 3 of said Act in respect to the equipment of cars in service on the first day of July, 1911, be and the same is hereby extended as follows:"

In other words there was no attempt upon the part of the Interstate Commerce Commission to extend the time within which any carrier should comply with Section 2, or to extend the operation of the Act itself; but the Interstate Commerce Commission, exercising the discretion which Congress had reposed in it, did undertake to extend the time within which carriers should comply with the provisions, not of the entire Act, not of Section 2, but of Section 3 of the Act as to cars in use July 1, 1911. Not only this, but we find that since July 1, 1911, the Interstate Commerce Commission has been continuously enforcing Section 2 of the Act of April 14, 1910.

We notice from a letter, dated November 16, 1915, written by Mr. G. B. McGinty, Secretary of the Interstate Commerce Commission, to Hon. W. R. Green,

at Council Bluffs, Iowa, one of the attorneys in the case of *Cook v. Union Pacific R. R. Co.*, 158 N. W., page 521, *infra*:

"HON. W. R. GREEN,

"Council Bluffs, Iowa.

"Dear Sir—In reply to yours of the 11th instant, please permit me to say that Section 4, of the Act of 1893, requiring a secure hand-hold or grab-iron, is in no manner repealed or suspended by any provision of the Act of April 14th, 1910.

"The provision of the latter Act, applying to the 'number, dimensions, location and manner of application' of grab-irons or hand-holds, in no way relieves the carrier from the obligation of the original Act to provide a 'secure hand-hold or grab-iron for the greater security to men in coupling and uncoupling cars.'

"The Commission is, as you say, prosecuting all cases where cars are in use which are not equipped with a 'secure grab-iron or hand-hold.'

"No case has been resisted by any railroad as far as we are at present informed upon the contention that there has been any suspension of the obligation to provide a secure hand-hold or grab-iron.

"This can readily be explained, for Section 5, of the Act of April 14, 1910, expressly says that nothing in the Act relieves the carrier from any of the liabilities or requirements of the Act of 1893 except as to movement of cars for repairs.

"As to roof hand-holds: The provisions of Section 2 of the Act of April 14, 1910, require roof hand-holds.

"This requirement became operative July 1, 1911, by the terms of the Act.

"For violation of the provision of Section 2, of the Act of April 14, 1910, that all cars having ladders shall be equipped with secure hand-holds or grab-irons on their roofs at the top of such ladders, the

Commission has instituted prosecutions, three of which are now pending.

"In the following cases the railroad carriers have confessed judgment: I. C. C. No. 2485, Court No. 4231, *United States v. St. Louis & San Francisco Railroad Company*, in the District Court of the United States for the Western District of Missouri, confessed August 13, 1915.

"I. C. C. No. 2390, Court No. 153, *United States v. Atlantic Coast Line Ry. Co.* in the District Court of the United States for the Southern District of Florida, confessed January 14, 1915.

"I. C. C. No. 2269, Court No. 15,300 *United States v. Wabash Railroad* in the District Court of the United States for the Southern District of Illinois, confessed November 16, 1914.

"I. C. C. No. 2060, Court No. 335, *United States v. Great Northern Ry. Co.*, in the District Court of the United States, District of Montana, confessed September 26, 1913.

"I. C. C. No. 2011, Court No. 544, *United States v. Kanawha & Michigan Ry. Co.*, in the District Court for the Southern District of West Virginia, confessed July 11, 1914.

"I. C. C. No. 1912, Court No. 15,234, *United States v. Wabash Railroad*, in the District Court of the United States for the Southern District of Illinois, confessed January 23, 1914.

"The only case contested was the case of the *United States v. Coal & Coke Railroad Co.*, I. C. C. No. 2029, Court No. 545, tried before a jury in the District Court of the United States for the Southern District of West Virginia, November 28th, 1913, in which case the Court ordered a verdict for the Government.

"It is thus apparent that the accepted interpretation of the Act is that the provisions of Section 2, of the Act of April 14, 1910, are in present effective operation and are not affected by the extension

order, a copy of which is enclosed herewith, which applies only to the 'number, dimensions, location and manner of application' of appliances.

Respectfully,

(Signed) G. B. McGINTY,
Secretary."

We quote this letter to show the Court the construction which the Interstate Commerce Commission has placed upon the Act since July 1, 1911, and for the purpose of showing the Court that the carriers subject to its provision have placed the identical construction thereupon. The Interstate Commerce Commission has successfully enforced the provision of Section 4, of the Act of 1910, in the Circuit Courts of Appeal in the following cases:

U. S. v. Trinity Ry. Co., 211 Fed., 448;

Chesapeake & Ohio Ry. Co. v. U. S., 226 Fed., 683;

U. S. v. Great Northern Ry. Co., 229 Fed., 927.

(C) Construction by Courts.

This Court in the case of *Tex. Pac. Ry. Co. v. Rigsby*, Advance Sheets, dated May 15, 1916, page 482, which was a suit for damages to an employe of an interstate carrier, under Section 2, of the Act of April 14, 1910, for a defective ladder, used the following language:

"It is earnestly insisted that Rigsby was not under the protection of the Safety Appliance Acts because, at the time he was injured, he was not engaged in interstate commerce. By p. 1, of the 1903 amendment, its provisions and requirements and those of the Act of 1893 were made to apply to 'all trains, locomotives, tenders, cars and similar vehicles used on any railroad engaged in interstate commerce—and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith' subject to an exception not now pertinent. And by p. 5, of the 1910 amendment, the provisions of the previous Acts

were made to apply to that act, with a qualification that does not affect the present case. In Section 4 of the Act of March 2, 1893, which requires 'secure grab-irons or hand-holds in the ends and sides of each car for greater security to men in coupling and uncoupling cars,' this action was not based upon that provision, however, but upon p. 2 of the amendment of 1910, which declares: "All cars must be equipped with sill steps and efficient hand-brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand-holds or grab-irons on their roofs at the tops of such ladders." There can be no question that a box car having a hand-brake operated from the roof requires also a secure ladder to enable the employe to safely ascend and descend, and that the provision quoted was intended for the especial protection of employes engaged in duties such as that which plaintiff was performing."

This Court in that case proceeded upon the theory that the Act of April 14, 1910, went into effect July 1, 1911, and if the position of counsel for plaintiffs in error is correct, enforced liability under the Act several years before the same went into effect.

The identical question was involved in the case of *Coleman v. I. C. R. R. Co.*, Supreme Court of Minnesota, 155, N. W., 763, the statement of facts being as follows:

"Defendant is a railroad corporation, engaged in interstate traffic, and as such comes within the statute. Plaintiff was in its employ as a brakeman, and on June 2, 1914, while engaged in the discharge of his duties as such, received the injury of which he here complains. In attempting to climb upon a box car, the rung of the ladder, insecurely fastened, pulled out, and plaintiff was precipitated to the ground and injured. The nature and character of the injuries are not important. The sole question

in the case is whether the Act of Congress referred to was in force and operation on the day plaintiff so received his injury. If it was, the case should have been submitted to the jury upon the issues of fact presented by the evidence. But if the Act was not then in force, the action was properly dismissed, for it is predicated wholly upon the alleged failure of defendant to comply therewith. This situation is conceded."

The Court below sustained a demurrer to the declaration upon the ground that the Act of April 14, 1910, did not go into effect until July 1, 1916. Upon appeal, however, the Supreme Court of Minnesota reversed the decision of the Court below, holding that Section 2, of the Act went into effect July 1, 1911, using the following language:

"The sole purpose of this part of the statute was to impose upon the railroads the absolute duty of maintaining their car equipments in safe condition for use. The language is clear and positive, and declares that on and after the date named it shall be unlawful to use such cars when not so equipped. It will not, as we read it, admit of qualification by judicial construction, and was intended to apply to cars in use at the time the Act was passed, as well as those thereafter brought into service. Section 3, upon which defendant relies in support of the contention that Section 2 was under suspension, relates to an entirely different branch of the same subject, and clearly was not intended as a qualification of the express provisions of Section 2. It was evidently deemed that the safety of the traveling public, as well as railroad employes engaged in the train service would best be protected by some uniform method or standard of car equipment applicable to all interstate roads, and to that end authority to fix such standard was, by Section 3, vested in the Interstate Commission. The reasons for the requirement of uniformity in equipment are plain. The cars of dif-

ferent roads operating throughout the states are promiscuously hauled, all are not equipped in the same manner, and a train composed of cars differently supplied with the appliances referred to in the statute results in confusion to the employes, and adds materially to the dangers connected with their work. With a uniformity of equipment, confusion is eliminated and danger of injury lessened. So, it seems clear that the sole purpose of Section 3, was to authorize the Commission to prescribe a uniform standard for the equipment of the cars of all the interstate railroads, and to require conformity therewith by such roads. The Commission was, by the terms of the statute, required to formulate rules fixing such standard within the time stated therein, and its order in the premises was given the force and effect of law. Congress had in mind that it would, as to some of the roads, be a practical impossibility to at once meet the demands of the new standard, and the Commission was further authorized to extend to them such time as would afford full opportunity of compliance. But, in so providing, it clearly was not the intention that during the period taken for installing the standard equipment, defective cars might be used and employed in the train service; nor was it intended that during that period, Section 2 of the Act should remain inoperative. If such had been the intention, then, that section might have been omitted altogether, and Section 3 made the substance and embodiment of the whole enactment. For then its operation would have been limited and in harmony with the contention of the defendant, namely, as an enactment requiring, within such time as the Interstate Commission might fix therefor, all railroads to equip and conform their cars to the standard there provided for. This view of the Act can not be adopted without doing violence to Section 2. Congress intended that section to be a part of the statute, and the clear language thereof can not be rejected, or held inoperative pending the installation

of the standard of equipment to be ordered by the Commission without running counter to the main purpose of the Act. The section must, therefore, stand, as a part of the statute, and be construed as imposing the duty upon railroads of maintaining their car equipment in secure and safe condition for use after July 1, 1911. Section 3 must be construed as a requirement of a uniform standard for such equipment, and that the extension of time within which to conform thereto has no reference to, and does not relieve from, the duty to maintain present equipment in secure and safe condition."

The identical question was presented in the recent case of *Cook v. Union Pacific Railroad Company* (Iowa), 158 N. W., page 521. The statement of the case in the opinion is as follows:

"Plaintiff brings this action as administratrix of the estate of one Paul O. Cook, under the provisions of the Federal Employer's Liability Act. She brings it for the benefit of herself, as surviving widow, and for the benefit of six minor children under the age of fourteen years, claiming that they were all wholly and solely dependent upon the deceased for maintenance and support. As a ground for action, she claims that on the 21st day of March, 1913, Cook was in the employ of the defendant as a brakeman on one of defendant's freight trains moving from Grand Island, Neb., to Council Bluffs, Iowa that when the train on which he was riding reached Central City, Neb., he was on the top of one of the cars, pursuing his duty as brakeman, and was sustaining himself by holding onto a hand-hold or grab-iron on the roof of the car, at the top of the ladder which extended down the side of the car; that while he was so sustaining himself, the hand-hold or grab-iron not being secure, gave way, by reason thereof, and deceased fell violently to the ground and received injuries which caused his death; that the deceased was not guilty of any fault or

negligence on his part, contributing to his injury and death, but his injury and death were due to the negligence of the defendant in this, that the hand-hold or grab-iron on the roof of the car on which he was seated, and of which he had hold just prior to the accident, was not secure as required by law, but, on the contrary, was unsafe and insecure; that by reason of his death, she has suffered damages.

"Defendant, answering this petition, admits sufficient facts to bring the case within the Federal Employer's Liability Act; admits that Cook was an employe in the service of the defendant as brakeman; admits that he came to his death near the town of Centra City, Neb., on March 21, 1913; but alleges that his death resulted from dangers and risks which were open, obvious, apparent and known to the deceased, and which were incident to his employment, and assumed by him; that he was guilty of negligence which approximately contributed to his death. Defendant further alleges that on March 13, 1911, the Interstate Commerce Commission of the United States extended the period of time within which defendant and all common carriers were required to comply with the provisions of the Safety Appliance Act, in so far as the Act required defendant to equip its freight cars with roof hand-holds at the top of the ladder. Defendant also filed a general denial to all the allegations of plaintiff's petition, not specially admitted."

In reference to which the Supreme Court of Iowa used the following language:

"The Commissioners were not given authority to suspend the provisions of Section 2, of the Act of April 14, 1910, or of the provisions of Section 4, of the Act of March 2, 1893. The authority given the Commission, as said before, was to fix standards, and then to extend the time in which the companies might adjust themselves to the new standard, or to the standards fixed, by changing the hand-holds,

already required and undoubtedly on the cars, to comply with the standards so fixed. Six months were given the Commissioners to fix the standards. They did not fix the standards until nearly a year afterwards, and, at the time they fixed the standards they made an order extending the time for five years in which to change and apply all other appliances on freight cars to comply with the standards prescribed in the order, made by the Commissioners, on all cars in use at the time of the taking effect of the Act of Congress requiring the placing of hand-holds. The standards fixed by the Commissioners, by the very Act that authorized them to fix standards, said that thereafter (that is, after the standards were fixed) they shall remain as the standards of equipment, and a failure to comply with the standards so fixed, after they are fixed, subjected the offending party to a like penalty as for a failure to comply with the requirements of the Act itself."

"It would seem, therefore, that the extension of time given by the Interstate Commerce Commission, relied upon, would not relieve the company of the obligation to discharge the duty imposed upon it by the second section of this Act. It could not be claimed that, if the Commissioners had never fixed the standards, the company would be immune from punishment if they failed to comply with the requirements of Section 2, and provided cars having ladders with secure hand-holds or grab-irons on the roof at the top of the ladders; nor could it be claimed that, if the Interstate Commerce Commission had failed to make any extension of time, then that the company would be relieved of the duty to comply with Section 2 touching hand-holds, even as to cars which were in use at the time of the passage of the Act.

"We are inclined to think that the power given to the Interstate Commerce Commission to extend the time in which common carriers were required to comply with the provisions of the Act related only to those provisions of Section 3, touching the stand-

ards to be fixed by the Interstate Commerce Commission. Or, in other words, it was intended that, when the Interstate Commerce Commission fixed the standards, all companies should change so as to comply with those standards in equipping their cars; that as to the cars already in use, or in use at the time of the taking effect of the Act, the Commissioners could extend the time for changing the equipment to comply with the standards. What the Commissioners undertook to do was to grant the carriers an extension of five years in which to change appliances on freight cars, to comply with the standards prescribed in the order. All cars put in use after the Act went into effect must be equipped as the Act required. All cars practically rebuilt were required to be equipped according to these standards fixed by the Commission. The authority delegated to the Commission was to fix standards, and to extend the time in which carriers who had cars already in use at the time of the Act, should comply with these standards, and equip their cars in accordance with the requirements of the standards. Until the Commissioners met and fixed the standards, the law did not require any particular standards, but said that the hand-holds should be placed as required by the Act, and be secure. The Act provided a penalty for a violation of Section 2, requiring hand-holds securely fastened on the roof of the car. Section 3 provided a like penalty for a failure to equip the car according to standards fixed by the Commissioners, for the Act says:

“ ‘Failure to comply with any such requirement of the Interstate Commerce Commission fixing the standards shall be subject to a like penalty as failure to comply with any requirement of the Act.’

“We are inclined to think that the authority given the Interstate Commerce Commission, and the Act of the Interstate Commerce Commission in extending the time, did not relieve railroad companies from complying with the provisions of Section 2, as to

grab-irons on the roof, securely fastened; but did give authority to the Commissioners to extend the time, and they did extend the time in which the companies, operating cars at the time went into effect, were to make the changes in equipment to comply with the standards required by the order of the Commissioners. However this may be, it is certain that the Act gave to the Commissioners only the right to extend the time for compliance with Section 3, and the provisions of the Commission fixing standards as to cars that were in actual use at the time the Act went into effect."

We, therefore, respectfully submit that according to the plain and unambiguous provisions of the statute, that on and after July 1st, 1911, carriers were required to provide secure hand-holds at the top of ladders. As stated in the Rigby case, "*The statute imposes an absolute and unqualified duty to maintain the appliance in secure condition.*"

The following results follow the passage of the Act of 1910, in all of its provisions:

(a) Carriers had from March 14, 1910, to July 1st, 1911, to make the equipment provided in the Act secure.

(b) It became the duty of the Interstate Commerce Commission to provide a standard of equipment, and that all cars should conform to this standard, but that as to cars in use on or before July 1st, 1911, the Interstate Commerce Commission could extend the time for the carriers to comply with the uniform standard.

(c) On and after July 1st, 1911, the equipment referred to in the statute was required to be safe and secure. And all cars built after July 1st, 1911, would be expected to conform to standard.

These conclusions are inevitable because:

(1) They arise from the positive and unconditional and unqualified language of the Act itself.

(2) Such was the construction put upon the Act prior to its passage.

(3) Such was the construction put upon the Act by Congress itself, in the Act of March 4th, 1911.

(4) Such was the construction put upon the Act by the Interstate Commerce Commission in providing the standard of equipment, and such construction has been uniformly maintained by it because it has uniformly and constantly enforced the provisions of Section 2 of the Act, since July 1st, 1911.

(5) Such is the construction shown to have been placed thereupon by the railroad companies themselves, because they have voluntarily paid fines and penalties incurred under the Act, since July 1st, 1911.

(6) Such is the construction which has been placed upon the Act by this Court, the Circuit Court of Appeals, and the State Courts, where the Act has been brought into question.

The argument of counsel for the plaintiffs in error is based upon the theory that the time for the compliance with the provisions of the Act by the carriers was postponed until July 1st, 1916. It is merely necessary, in order to answer this argument, to refer to Section 3 of the Act itself. The only power which the Interstate Commerce Commission had to grant any extension at all, of time within which carriers should comply with any portion of the Act, is found in Section 3 thereof, and before the Interstate Commerce Commission could grant any extension whatsoever, it must necessarily be able to put its finger upon the grant of power, which grant is contained only in Section 3 of the Act. And we have already indicated to the Court that this grant of power to the Interstate Commerce Commission only permitted the Interstate Commerce Commission to extend the time within which carriers might comply with Section 3 of the Act, and not as to all cars, but as to cars actually in service prior to or on April 14th, 1910, and the time was afterwards ex-

tended by the Act of March 4th, 1911, conferring upon the Interstate Commerce Commission authority to extend the time within which carriers should comply with Section 3, not with Section 2 of the Act, as to cars inside July 1st, 1911; and the Interstate Commerce Commission in extending the time, conformed its order to the grant of power contained in Section 3, of the Act of 1910, and in the Act of March 4th, 1911, hereinbefore set out in full.

As a matter of fact, even as to cars in use July 1st, 1911, the Interstate Commerce Commission did not make an unconditional extension of time within which they should conform to the Standards. Paragraph G., Thornton, page 512, is in the following language:

"(g) Carriers are not required to change the location of hand-holds (except end hand-holds under end sills), ladders, sill steps, brake-wheels, and brake staffs on freight train cars where the appliances are within three inches of the required location, except that when cars undergo regular repairs they must be made to comply with the standards prescribed in said order."

By which it is provided that in cases where equipment was not more than three inches from the required location on any car, that the appliances should not be changed unless the car should undergo regular repairs.

And paragraph F, Thornton, on the same page, provides that any car, although in use July 1st, 1911, when undergoing regular repairs, shall conform to the standard.

So, we find that the argument of counsel for plaintiffs in error that the entire Act of April 14th, 1910, was suspended by the Order of Interstate Commerce Commission until July 1st, 1916, is in direct and utter contradiction with the plain and express terms of the Act itself, and in conflict with the orders of the Interstate Commerce Commission passed thereupon. The Interstate Commerce Commission never undertook to relieve the carriers of their duty as provided in Section 2 of

the Act of 1910, and never undertook to extend the time within which any carrier should make this equipment safe and secure, as provided in said Section 2. Upon the other hand, on and after July 1st, 1911, it was the imperative duty of each carrier engaged in Interstate Commerce, which included the plaintiffs in error in this case, to make its equipment absolutely safe and secure.

AFFIRMATIVE DEFENSE.

We have in the preceding pages fully presented to the Court our views to the effect that the Act of April 14th, 1910, went into effect July 1st, 1911, in accordance with the unconditional provisions thereof, and that after such date it was the duty of the carriers engaged in interstate commerce to maintain safe and secure hand-holds on the roofs of cars, at the top of ladders. It might be argued, however, in this case that the Interstate Commerce Commission having authority to extend the time within which any carrier should comply with Section 3 as to cars in service July 1st, 1911, that the Act did not go into effect until July 1st, 1916, as to such cars and the car in question may have been in use July 1st, 1911. The fallacy of this argument, of course, would lie in the fact that the Interstate Commerce Commission had authority only to extend the time within which carriers should standardize certain cars, that is to say, cars in use July 1st, 1911. But conceding this position merely for the sake of argument, and we protest that it is unsound and in the face of the express provisions of the statute, we respectfully submit that it was the duty of plaintiffs in error to plead and prove affirmatively the facts necessary to bring them within the immunity which it is contended that the order of suspension afforded to them.

In the first place, the time when a certain car was built would ordinarily be a fact within the exclusive knowledge of the railroad company. And as to whether or not a car had been rebuilt or as to whether or not the hand-hold at the top of the car was more than three inches from the standard adopted by the Interstate

Commerce Commission would also lie within the exclusive knowledge of the Railroad Company. In other words, even if this position should be correct, it would not be the duty of the defendant in error to allege and prove as part of his case that the car in question was not in use July 1st, 1911; or if in use July 1st, 1911, that its appliances were not more than three inches from the standard, and that the car had undergone repairs. Upon the other hand, if such facts constituted the defense of the Railroad Company, it was the carrier's duty to affirmatively plead and prove the same. This identical question was decided in the case of *Cook vs. Union Pacific Railroad Company* (*supra*), and was disposed of as follows:

"Even if we were to accept the defendant's contention, and say that the time granted by the Commissioners related to all cars in actual use at the time of the taking effect of the Act, and that no duty rested upon the company to have either secure or standard hand-holds on the roof at the top of the ladder of such cars at the time of the accident, yet we are met with the proposition that this Act could only, even under defendant's theory, relate to cars that were in actual use at the time of the taking effect of the Act. These cars, then, if defendant's contention is accepted, are to be excepted from the duty imposed upon carriers by Section 2, and excepted from that rule because of the action of the Commissioners. There is no evidence that the car in question was in actual use at the time of the taking effect of the Act. There is no evidence that this car comes within the exception that relieved the company from having hand-holds, required at the time of the accident. The defendant, seeking to avail itself of this exception, has the burden of proving that it is within the exception, and that this car was one of the cars to which the exception applied. There is no evidence upon this point. We cannot assume that this car was within the exception. The duty imposed by Section 2 is general, and rested upon

every company, from and after the 1st of July, 1911, and if defendant desired to avail itself of its own contention, it should have brought the car complained of within the exception to get the benefit of the extension. It is a general rule that where an action is predicated upon a statute to which there is an exception or proviso, if the proviso or exception be found in a separate section, or in a subsequent substantive enactment, it is a defense, and if relied upon, the facts that bring it within the exception must be pleaded and proven. This is a rule of general application. See *First National Bank of Davenport v. Baker*, 57 Iowa, 197, 10 N. W. 633; *State v. Van Vilet*, 92 Iowa 476, 61 N. W. 241. On this branch of the case, we must, therefore, hold against the defendant's contention."

This question was illustrated in the case of *United States vs. Trinity Ry. Co.*, 211 Fed., 448, which was decided by the Circuit Court of Appeals, Fifth Circuit, at New Orleans, La. That was a suit brought to recover penalties for the use of insecure equipment in violation of the Safety Appliance Act. Section 4 of the Act of 1910, which is under discussion in this case, provided that:

"Where any car shall have been improperly equipped as provided in this Act and the other Acts herein mentioned, or such equipment shall have become defective and insecure while such car was being used by such carrier on its line of railroad, such car may be hauled from such place when such equipment was first discovered to be insecure, to the nearest available point where such car can be repaired without liability to the penalties imposed by Section 4 of this Act, or Section 6 of the Act of 1893."

We have already called the attention of the Court to the fact that this provision did not constitute a defense to the carrier as against a suit by an injured employe, but by the provision contained in Section 4

of the Act of 1910, it was made a defense in so far as the penalties therein provided were concerned. In that case the government sued to recover the statutory penalty accrued on account of the violation of the Act. And the question arose as to the burden of proof in the case. The government in its declaration merely alleged the defective equipment. The railroad road company, see page 449, in a special plea, brought itself within the scope of the provisions contained in Section 4. See the special plea on page 449. The Government took issue thereupon, and it appeared that the car was found defective in Houston, but the railroad company hauled the car with the defective equipment to some other point, and the evidence tended to show on the part of the Government that the equipment could have been repaired in Houston. The question necessarily presented was whether it was necessary for the Government to show that the car could have been repaired at Houston, or if it was necessary for the railroad company to take the affirmative issue and establish by the burden or proof that the equipment could not have been repaired at Houston. The Court said:

"Unless the evidence of the defendant tends to show, in addition to the facts above recited, to-wit, that the car was properly equipped at starting on the journey and became defective while being used on the line of railroad of defendant, that the movement of the car in the train was necessary to repair the defect, and that the repair could not have been made except at such repair point, then the defendant has not brought itself under the proviso, and there was no question of disputed facts to submit to the jury. Certainly there is no evidence in the record that in the slightest degree tends to prove these last mentioned requisites. Bear in mind that under the Safety Appliance Act of 1893, and the Amendments, ignorance of defects does not excuse. The duty to have and maintain in good order the safety appliances required is a positive duty imposed on the carrier by the statute, and that the defendant in the

instant case seeks to avoid responsibility for the violation of this duty by pleading the proviso of the Act of 1910. By all the canons of construction, it must clearly bring itself within the terms of the proviso before it can demand immunity."

So, in this case, if it should be held that as to cars in use July 1st, 1911, the carrier had five years within which to standardize the equipment, and as to such cars the Act was postponed until July 1st, 1916, it was the duty of the plaintiffs in error in such case to bring themselves within the protection and immunity claimed. It would have been necessary for the plaintiffs in error to plead:

(a) That the car in question was in use on or before July 1st, 1911;

(b) That it had not been repaired or rebuilt to conform to the standards;

(c) That the hand-hold at the top of the car was more than three inches from the standard adopted by the Interstate Commerce Commission.

An argument of this character would be based upon the assumption that the order of the Interstate Commerce Commission extending the time which the carriers should have within which to comply with Section 3 of the Act of 1910 constituted an exception to the statute, and that it was necessary for the defendant in error to negative the exceptions. The statute, however, contains no exception after July 1st, 1911. The general rule is that wherever a pleading is based upon a statute and the enacting clause of the statute contains an exception, it is necessary for the pleader to negative the exception; but if the exception is stated subsequently to the enacting clause, or in some other statute, or is in the nature of a provision, then in such case the plaintiff makes out a *prima facie* case without negating the exception or provision, and the defendant must plead the same and bring itself within the immunity or protection afforded by the provision.

In *Cyc.*, Vol. 31, at page 115, the rule is stated as follows:

"When a party relies upon a statute which contains an exception in the enacting clause, such exception must be negatived, but where the exception occurs in the proviso or in any subsequent clause of the Act, such exception is a matter of defense, and need not be negatived." (Citing many cases in Note 49.)

The same rule is cited in *Cyc.*, Vol. 36, page 1238. And the identical question is presented in the case of *Bellenger vs. State* (Ala.), 9 So., 399. The Alabama Code contains the following provision:

"Any person who takes for temporary use, or using temporarily any animal or vehicle without the consent of the owner, must on conviction, be fined, but no prosecution must be commenced or indictment found, except upon complaint of the owner," etc.

An indictment was returned which did not allege that it was found upon complaint of the owner. The Court held, even in a criminal case, that such was a matter of affirmative defense, using the following language:

"The defendant contends that the indictment in this case is defective, in that it fails to charge that the prosecution was commenced or the indictment found upon complaint of Isaac Weatherly, the owner of the mule. This was not moved in defense, or in arrest of judgment of the Court below, but is urged before us as grounds of reversal. In *Clark vs. State*, 19, Ala., 552, it was said to be the correct rule on the subject, 'that if there be any exception contained in the same clause of the Act which creates the offense, the indictment must show negatively that the defendant does not come within the exception.' (Citing: 1 Bish. Crim. Proc., Section 635, quotes with apparent approbation the following language: 'If there is an exception in the enacting

clause, the party pleading must show that his adversary is not within the exception, but if there be an exception in a subsequent clause or subsequent statute, that is matter of defense, and is to be shown by the other party. See *Carson vs. State*, 69 Ala., 235; *Gratton vs. State*, 71 Ala., 344; 1 Bish. Crim. Proc., Section 631, *et seq.*"

In the case of *Bush vs. Wathen* (Ky.), 47 S. W. 600, where the identical question was under discussion as to whether or not a pleader should negative an exception or provision not contained in the enacting clause of the statute, the Court used the following language:

"1 Chit. Pl. (8th Am. Ed.) states the rule as follows, to-wit: 'In pleading upon statute, where there is an exception in the enacting clause, the plaintiff must show that the defendant is not within the exemption, but if there be an exception in a subsequent clause, that is a matter of defense, and the other party must show it to exempt itself from the penalty.'

"And again on the next page (Chitty), Lord Tenderden is quoted as follows: 'If an Act of Parliament or private instrument contain in it, first, a general clause, and afterwards, a separate and distinct clause, something which would otherwise be included in it, a party relying upon the general clause in pleading, may set out that clause only, without noticing the separate and distinct clause which operates as an exception. But if the exception itself be incorporated in the general clause, then the party relying upon it must, in pleading, state it with the exception.' Blinn, Code Pl., 202, says: 'When the exception is embodied in the body of the clause, he who pleads for the clause ought to plead the exception; but when there is a clause for the benefit of the pleader, and afterwards, following proviso which is against him, he shall plead the clause and leave it to his adversary to show the proviso.' When exceptions to the general provision of a statute are found in a distinct clause, the plaintiff need not allege that he is not

within them. (Citing): *Nicholls vs. Sennitt*, 78 Ky., 630. The Court said in the case of *Com. vs. McClanahan*, 2 Metc. (Ky.) 10: 'It is well settled that where provisos and exceptions are contained in distinct clauses, it is not necessary to aver in the indictment that the defendant does not come within the exceptions, or to negative the provisos which it contains. Nor is it necessary to allege that he is not within such provisos, even though the purview should expressly notice them, as by saying that none show the Act prohibited, except in cases thereafter excepted. These are properly matters of defense.'

The case of *Melzner vs. Raven Copper Co.* (Mont.), 132, at page 552, was a suit brought by a miner against the owner of the mine, under a statute containing the following language:

"Every person operating a mine shall be liable for a damage sustained by any employe thereof within this State when such damage is caused by the negligence of the hoisting engineer, etc., unless the employe himself was guilty of contributory negligence."

The Court held that it was unnecessary to allege or plead that he was not guilty of contributory negligence, using the following language:

"To our minds, the phrase 'without contributory negligence on his part,' is a mere proviso, or qualifying clause, inserted to forestall any possible interpretation of the statute, as also, abolishing the defense of contributory negligence, and this finds support in the consideration of the title and purview of the original enactment, which proviso need not be negatived in the complaint." (Citing): *Lorimer vs. St. Paul St. Ry. Co.*, (Minn.), 51 N. W., 125; *Rowell vs. Janvrion* (N. Y.), 45 N. E., 398; *Acker vs. Richards* (N. Y.) 71 N. Y. S., 929; *State vs. Stapp*, 29 Ia., 551; *Bliss on Code Pl.*, par., 202; *Phillips on Code Pl.*, par. 239."

See, also, the case of *Columbus & W. Ry. Co. vs. Bradford* (Ala.), 6 So., p. 90.

In *Bliss on Code Pleading*, par. 202, the rule is announced as follows:

"So, in an action upon a penal statute, if the proviso be in a separate section or a substantive clause, it is a matter of defense, and should be left to the other party. But if it be a matter of exception contained in the enactment or prohibiting clause, it is a part of the thing prohibited, and the pleading must show that this matter of exception does not cover the act complained of."

In the case of *Lane vs. Bell* (Tex.), 115 S. W., 918, where the question was presented as to the necessity of alleging and proving an exception contained in the statute, the Court said:

"With practical unanimity, the authorities seem to hold that where there is an exception embraced in the enacting clause of a statute, the plaintiff suing under the statute must, in his pleading, negative such exception, but a proviso contained in the same clause, or in a subsequent clause of the statute, is a matter of defense, and need not be negatived by the plaintiff seeking relief by the statute." (Citing): *Ry. Co. vs. Carter*, 20 Ill., 390; *Ry. Co. vs. Brown*, 23 Ill., 92; *Ry. Co. vs. Hanks*, 36 Ill., 281; *Lynch vs. People*, 16 Mich., 472; *Ry. Co. vs. Robeson*, 27 N. C., 391; *Tomlinson vs. Banika* (Ind.), 70 N. E., 155.

It is unnecessary to cite authorities to show that the rule in reference to the evidence and the burden of proof would follow the rule of pleading; that if it was the duty of plaintiffs in error to affirmatively plead the facts, bringing them or either of them, within the immunity which they claimed under the order of the Interstate Commerce Commission, then, as a matter of law, it was their duty to prove the same. The pleader who takes the affirmative assumes the burden of proof to establish such facts.

"The general rule is that whoever has the affirmative of the issue as determined by the pleadings, has the burden of proof." *Cyc.*, Vol. 16, page 926.

"Under the common law system of pleading, the burden of proof is on the party holding the affirmative of the issue to establish the substance of his contention, by the required preponderance of evidence." *Cyc.*, Vol. 16, page 298.

Suppose some employe goes upon a car, the hand-hold is defective, and he is injured. The employe is not even able to get the number of the car, and is unable under any state of facts, to show that the car was in use July 1, 1911, or when built, or, in fact, anything about it. Would this Court pretend to hold that the burden of proof would rest upon the injured employe in such case to show that the car in question was either not in use July 1, 1911, or that its equipment had been changed to comply with the Safety Appliance Act since that time, or that its hand-hold was not within three inches of the required location, and that the car had not been rebuilt or regularly repaired. We respectfully submit that certainly this Court will not permit the statesmanlike enactments comprising the Safety Appliance Act, upon which it has placed such statesmanlike construction, to be whittled away, and railway employes deprived of its benefits in such manner

Not Necessary to Negative Defensive Matter.

As a corollary to the foregoing proposition, we desire to state that it was never necessary for the plaintiff to negative defensive matter. In the case of *Hickman vs. R. R. Co.*, 66 Miss., 164, it was held by this Court that it was never necessary for a plaintiff in an action at law to negative contributory negligence, that being a matter of affirmative defense for the defendant, and the general proposition has been announced in this State that affirmative matters need not be negatived by the plaintiff in the following cases:

Kershaw vs. Bank, 7 Howard, 386;

Brown vs. Broach, 52 Miss., 536;

and the following are a few additional authorities which maintain the same proposition:

Flynn vs. Barnes (Ky.), 161 S. W., 523;
Schwartz vs. Brown, 119 N. Y. S., 1024;
Downey vs. Colorado Fuel & Iron Co. (Col.),
 108 Pac., 972;
R. R. Co. vs. Crosby (Ala.), 62 So., 889;
Gittings vs. Loper, 84 Fed., 102.

Other authorities might be cited upon this point without end. Therefore, we respectfully submit that if the order of the Interstate Commerce Commission referred to in this case, afforded to plaintiffs in error any immunity or relief, they should have affirmatively pleaded and proven the facts bringing them within the protection of the order. We do not mean to say that the Court will not take judicial notice of the orders of the Interstate Commerce Commission. As to that, it is not necessary for us to express an opinion, but we do state that if the facts contained in the order and the statute afforded the plaintiffs in error any defense, they should have by appropriate pleadings presented the same to the attention of the Court below.

In this connection, we call the attention of the Court to the recent opinion of this Court in the case of *San Antonio & Arkansas Pass Ry. Co. vs. Wagner*, decided by this Court June 5, 1916, *supra*. In that case, which was a suit brought ostensibly under the Federal Employer's Liability Act, there was a failure upon the part of the plaintiff to prove that the employer was engaged in interstate commerce. The point was not made in the trial Court, but the point was raised for the first time on appeal. This Court declined to reverse on that ground, saying:

"We shall decide the case upon that assumption although we find nothing in the record to show that in fact plaintiff was injured in interstate commerce at the time he was injured. We are asked to take notice of the omission of pleading and proof of the

fact as 'plain error,' and deal with it, although not assigned under paragraph 4 of Rule 29. We must decline to do this, principally for two reasons:

(a) The omission may have been due to an oversight that would have been corrected if the point had been raised by the present plaintiff in error in the State Courts."

So, we say, in the present instance, the plaintiff in error never suggested by any kind of pleading that the car in question was one in use July 1st, 1911, and which was not rebuilt since said date, and the equipment was more than three inches out of the standard, as provided by the Interstate Commerce Commission. For all that appears in this record, the car may have been one built since July 1, 1911, or it may have been one, though in use July 1, 1911, which had been completely rebuilt, or it may have been one of which, if in use July 1, 1911, the hand-holds at the top of the car may not have been more than three inches from the required standard. We respectfully submit that if plaintiff in error had, with its pleadings in the lower Court, sought to bring itself within the immunity which it now claims is afforded it by the statute, the defendant in error might have been able to show:

(a) That the car was not in use July 1, 1911;

(b) That it had been rebuilt since said time.

(c) That its standard of equipment at the top of the car was not more than three inches from the specifications adopted by the Interstate Commerce Commission.

What we have said in the present division of this discussion, however, is not by any means intended as an admission or concession that the statute did not go into effect July 1, 1911, as it expressly provided. What we mean to say is that even if the position be correct that is to say, stating the position from the standpoint of the plaintiff in error as strongly as the same can be stated, we respectfully submit that it was necessary

for the plaintiff in error, even if the position be sound which we deny, by affirmative pleading and proof to bring itself within the immunity in which it now seeks to take refuge. It has not done so, and as said in the Wagner case, so far as this record is concerned, and if it should be necessary to a decision of the case, in the absence of error, this Court may assume that the car was one built since July 1, 1911, or one which was rebuilt since said date, or one on which the standard of equipment was not more than three inches out of order.

We call the attention of the Court, however, to still another suggestion in reference to the subject matter. Questions of pleadings, even under the Federal statutes, are to be determined by State laws.

Roberts, Interstate Injuries, Par., 154;
Fleming vs. Norfolk Ry. Co., 160 N. C., 196;
Chesapeake & Ohio Ry. Co. vs. Kelly (Ky.),
 171 S. W., 185;
Gibson vs. Billingham, 213 Fed., 488;
Winters vs. Minneapolis & St. Louis Ry. Co.
 (Minn.), 148 N. W., 106;
L. & N. R. R. Co. vs. Stewart, 156 Ky., 550.

It is not only necessary for the plaintiffs in error to show that a Federal question was involved in the trial of this case; that is to say, absolutely necessary to a decision of the case; but plaintiffs in error must show that the Federal question was properly brought to the attention of the State Court. In other words, it is the duty of the plaintiffs in error, by appropriate pleadings, to bring to the attention of the Court below any facts affording them special immunity, or protection from the provisions of the Act of April 14, 1910. For all this record shows, the Supreme Court of the State of Mississippi may have been of the opinion and decided, that it was unnecessary for it to decide whether the Act went into effect July 1, 1911, or July 1, 1916, because the plaintiffs in error never by any kind of pleadings or evidence showed that the car upon which defendant in error was injured was a car actually in service July 1, 1911.

Miller v. Nichols, 4 Wheat. 311, 4 Law. Ed., 578;

Hamilton Mfg. Co. v. Mass., 6 Wall., 632, 18 Law. Ed., 904;

Southern R. R. Co. v. Carson, 194 U. S., 136, 48 Law. Ed. 907;

Loeb v. Columbia Township, 179 U. S., 472; 45 Law. Ed., 280;

Phoenix-Insurance Co. v. Gardner, 11 Wall., 204, 20 Law. Ed., 112.

We do not mean to say that a Federal question was not involved in this case. The suit was brought under the Safety Appliance Act, and, necessarily, presents a Federal question; but every Federal question presented by the pleadings in the case was foreclosed by the decision of this Court in the Rigsby case, *supra*, and cases cited therein. What we mean, however, is that the plaintiffs in error in the Court below never suggested by any kind of pleading that the Act of April 14, 1910, was not in effect; nor did they ever claim that the car in question was one in actual service July 1, 1911, that it had never been repaired, or that its equipment was more than three inches from the standard.

Counsel for plaintiffs in error in their brief use the following language:

"It will be observed that under the third clause, the privilege, right or immunity must be specifically set up or claimed to give this Court jurisdiction; but where the validity of a treaty or statute of the United States is raised, or an authority exercised under the United States is drawn in question, and the decision by the State Court is against their validity, it has been decided that if the Federal question appears in the record and was decided, or such decision was necessarily involved in the case, the fact that it was not specifically set up and claimed is not conclusive against the review of such a question in this Court."

We do not mean to take the position that a Federal question is not raised unless specially set up. What we mean to say is that if any immunity could have been afforded to the plaintiffs in error by reason of the fact that the car in question was in use July 1, 1911, and under the order of the Interstate Commerce Commission, it had five years within which to become standardized, then such facts constituting the immunity should have been specifically set up.

Record Indicates Equipment Was Standardized.

In this case, although there was no pleading filed by the plaintiffs in error raising the question now under discussion, still the record abounds with references fairly well establishing the fact that the car upon which defendant in error was injured had been standardized.

Defendant in error himself testified that the car in question had a ladder on it, and that the ladder was defective. (See Tr., page 33.)

C. T. Earle, a witness for the defendant in error, testified that the car had a ladder on it, and states that the hand-hold on the top of the car had been fastened with a bolt. (Tr., page 117). It will be noted that the specifications adopted by the Interstate Commerce Commission required the hand-holds to be securely fastened with bolts; see *Thornton*, page 471.

C. P. Stewart, a witness for the defendant in error (Tr., page 236), who was an inspector for the plaintiffs in error, on February 25, 1913, examined the car in question and his testimony contains inferences that the car had been standardized.

And Mr. G. W. Hill, a witness for plaintiffs in error, testified as to the conditions of the hand-hold after the accident, from which testimony it might well be inferred that the hand-hold at the top of the car had previously been made to conform to the standards adopted by the Interstate Commerce Commission. (See transcript, page 241.)

The plaintiff in error did not deny that the car in question was one built since July 1, 1911. They do not deny, and make no pretense that if the car in question was one in use July 1st, 1911, that its equipment and appliances had not been brought to the standard. They place themselves, however, upon the position that the entire Act was postponed in its effect until July 1st, 1916, a position which is in utter contradiction to the plain and express provisions of the Act.

The Interstate Commerce Commission was never given authority to postpone the time when the Act would go into effect. The Act went into effect July 1st, 1911. The Interstate Commerce Commission was given authority to extend the time within which carriers might comply with Section 3 of the Act, as to certain cars in use July 1st, 1911.

This question is illustrated in the case of *U. S. vs. Great Northern Ry. Co.*, 229 Fed. 927. In that case, suit for a penalty was brought by the United States against the Great Northern Railway Company for maintaining a train of cars without efficient brakes, as provided in the Act of 1893, 1903, and the amendment of 1910. The Act of 1893 provided that not less than fifty per cent of the cars in a train should be so used that brakes could be operated without the use of the hand brakes, and the Interstate Commerce Commission was given authority to increase the number. Accordingly, on June 6, 1910, the Interstate Commerce Commission entered an order requiring 85 per cent of the cars susceptible of being moved by the air brakes. See *Thornton*, p. 460,

In that case, suits were brought because some of the cars upon the train had to be operated by hand brakes, and the railroad company pleaded and proved that more than 85 per cent of the cars on the train could be operated by air brakes, and that this was a complete defense to the suit. The Circuit Court of Appeals, 9th Circuit, through Judge Gilbert, said:

"In view of the protection which was intended to be afforded by this Act, it would have been idle for Congress to require that freight trains must be equipped with appliances to operate a power brake system, and at the same time leaving it optional with the railroad company to decide whether it would or would not operate its trains with that system. To say which trains would be provided with power brakes, and in the same breath to say if the carrier refused to get them, is to contradict the very purpose and terms of the Act. If such is the effect of the law, it will be given the construction contended for by the defendant in error."

Decision Affirmed on Common Law Ground.

The Supreme Court of the State of Mississippi delivered no written opinion, and irrespective of the fact that the action was predicated on a Federal Statute, may have come to the conclusion that a decision of the question as to whether the Act of April 14, 1910, went into effect July 1st, 1911, or July 1st, 1916, was unnecessary. The Court may have come to the conclusion that looking at the record in its entirety, that the judgment could be sustained as a common law action, notwithstanding the fact that the action was brought under the Safety Appliance Act and the instructions by the Trial Court were predicated thereupon. The fact that the defendant in error was injured in the regular course of his employment through a defective hand-hold was undisputed, and the great weight of testimony established the fact that the roof of the car was rotten and decayed. (See testimony of C. T. Earle, Tr. 67; and John M. McGinnis, Tr. 16.)

The Supreme Court of the State of Mississippi has a set of rules, rule No. 11 being as follows:

"No judgment shall be reversed on the ground of misdirection to the jury, or the improper admission or exclusion of evidence, or other error as to the matter of pleading or procedure, unless it shall affirm-

atively appear from the whole record that such judgment has resulted in a miscarriage of justice."

This rule was brought in question before the Supreme Court of Mississippi in the case of *Preston Jones v. State*, 104 Miss., 871, and the Supreme Court of Mississippi said that the rule came from the common law, and was valid and enforceable, and sustained the same.

The plaintiffs in error must affirmatively show, not only that a Federal question was adjudicated by the State Court, but that a decision of the Federal question was absolutely essential to the judgment rendered.

Adams v. Russell, 229 U. S., 353, 57 Law. Ed., 1224;

R. R. Co. v. Swann, 111 U. S., 379, 28 Law. Ed., 462;

Gray v. Evans, 97 U. S. 1, 24 Law Ed., 291;

Jenkins v. Lowenthal, 110 U. S. 222, 28 Law. Ed., 129;

State ex rel. Citizens' Bank of Louisiana v. Board of Liquidation, 98 U. S., 140, 25 Law Ed., 114;

Waters-Pierce Oil Co. v. Texas, 212 U. S., 86, 53 Law Ed., 417;

Gaar, Scott & Co. v. Shannon, 223 U. S., 468, 56 Law. Ed., 510;

Railway Co. v. Duval, 225 U. S., 477, 56 Law. Ed., 1171.

The record disclosed the fact undisputedly that while this defendant in error was injured upon the 15th day of March, 1915, there had been no inspection by the plaintiffs in error since the 25th day of February prior thereto. (See testimony of C. P. Stewart, Tr. 236.) Therefore, the Supreme Court of the State of Mississippi, looking at the record as an entirety, may well have come to the conclusion that there had been no miscarriage of justice, and that on common law grounds, it would affirm the decision of the trial Court.

In fact, on oral argument of the case in the Supreme Court of the State of Mississippi, the judges indicated that on the facts stated, they might sustain the verdict on common law grounds.

We, therefore, respectfully ask that the judgment of the Court below be affirmed.

WILLIAM H. WATKINS,
Attorney for Defendant in Error.

M. F. HARRINGTON,
WILLIAM H. WATKINS,
Of Counsel.

ILLINOIS CENTRAL RAILROAD COMPANY ET
AL. *v.* WILLIAMS.

ERROR TO THE SUPREME COURT OF THE STATE OF
MISSISSIPPI.

No. 637. Argued December 6, 1916.—Decided January 8, 1917.

Section 2 of the supplementary Safety Appliance Act of April 14, 1910, c. 160, 36 Stat. 298, requiring interstate railway carriers to equip their cars with secure running-boards, ladders, and hand-holds or grab-irons, became effective July 1, 1911.

The purpose of § 3 of the act is to standardize the appliances required by § 2, and the purpose of the proviso in it is to confer authority

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on the Interstate Commerce Commission to extend the time within which the carriers may conform to the established standards, but it does not authorize the Commission to change the date upon which § 2 became effective.

72 So. Rep. 158, affirmed.

THE case is stated in the opinion.

Mr. Charles C. LeForgee, with whom *Mr. Blewett Lee*, *Mr. Charles N. Burch* and *Mr. Robert B. Mayes* were on the briefs, for plaintiffs in error.

Mr. M. F. Harrington and *Mr. William H. Watkins* for defendant in error.

MR. JUSTICE CLARKE delivered the opinion of the court.

It will contribute to brevity in this opinion to designate the parties as they were in the state circuit court, the defendant in error as plaintiff and the railroad companies as defendants.

The plaintiff, a switchman in the employ of the defendants, was in the act of mounting, by means of a ladder, to the top of a box car to set the brake, when the hand hold or grab iron placed at the top of the ladder, and intended to be fastened securely to the roof of the car, gave way, causing him to fall to the ground and sustain injuries, for which he instituted suit in a circuit court of Mississippi, and recovered a judgment, which was affirmed by the Supreme Court of the State. This judgment is now here for review on writ of error.

Counsel for the defendants concede that the plaintiff pleaded and proved a case which entitles him to recover under the provisions of the supplement to the Federal Safety Appliance Act, approved April 14, 1910, if § 2 of that act was in effect at the time the accident to the plaintiff occurred on the night of March 15th, 1913; but they

claim that this section of the act was not in effect at that time, because it had been suspended until July 1st, 1916, by an order of the Interstate Commerce Commission, issued on March 13th, 1911, under the authority contained in the proviso of § 3 of the act.

Thus the sole question presented for decision is, Does the order issued by the Interstate Commerce Commission on March 13th, 1911, suspend the provisions of § 2 of the act under discussion until July 1st, 1916?

To answer this question requires an examination of §§ 2 and 3 of the Act of April 14, 1910, and of the order of the Interstate Commerce Commission of March 13th, 1911.

Section 2 of the act provides that on and after July 1st, 1911, "All cars" used by any common carrier subject to the act, "requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand holds or grab irons on their roofs at the tops of such ladders," and it makes it unlawful to use cars not so equipped.

A box car could not properly be used without a secure ladder and since, by its terms, all cars having ladders must be equipped with secure hand holds, the application of this section (if it was not suspended) to the case at bar, the neglect of its requirements, and the liability of the defendants to the plaintiff for the result to him of such neglect are too clear for discussion. *Texas & Pacific Ry. Co. v. Rigsby*, 241 U. S. 33.

Section 3 of the act provides that within six months from the passage of the act the Interstate Commerce Commission "shall designate the number, dimensions, location, and manner of application of the appliances provided for by section two of this Act" and shall give notice of such designation to all common carriers subject to the provisions of the act by such means as the Commission

may deem proper, and "thereafter said number, location, dimensions, and manner of application as designated by said commission, shall remain as the standards of equipment to be used on all cars subject to the provisions of this Act;" and failure to conform its equipment to such standards shall subject the neglecting carrier to like penalty as failure to comply with any requirements of the act. Then follows this proviso, upon which the defendants rely, viz:

"*Provided, That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of cars actually in service upon the date of the passage of this act.*"

Pursuant to the command of this third section, the Interstate Commerce Commission, on March 13th, 1911, issued an order designating "the number, dimensions, location, and manner of application of the appliances provided for by section 2 of the act," and specifically describing the size, character, and location of ladders on "freight-train cars" and of hand holds to be maintained at the tops of such ladders. By the terms of this order carriers were granted an extension of five years from July 1st, 1911, in which to bring such safety appliances into compliance with the standards by it prescribed.

The claim of the defendant railway companies with respect to these two sections is built up wholly upon the assertion, it cannot properly be called argument, that because, in the part of § 3 just quoted, reference is made to § 2 for a description of the safety appliances to be standardized, therefore the whole of § 2 must be treated as so incorporated into § 3 as to be comprehended within the expression of the proviso giving power to the Interstate Commerce Commission to extend the period within which any common carrier "*shall comply with the provisions of*

this (the third) section," etc., and that § 2 was therefore suspended until July 1st, 1916, by the Commission's order of March 13th, 1911.

That this strained and artificial construction of the section cannot be allowed, may be made clear by a brief consideration of the terms and purposes of the two sections of the act.

The congressional purpose in enacting § 2 of the act is very plain. At the time the act was passed railroad carriers had in service many box cars, requiring for their proper use secure ladders and secure hand holds or grab irons on their roofs at the tops of such ladders, and the purpose of this section clearly is to convert the general legal duty of exercising ordinary care to provide such safety appliances and to keep them in repair, into a statutory, an absolute and imperative duty, of making them "secure" and to enforce this duty by appropriately severe penalties. *Chicago, Burlington & Quincy Ry. Co. v. United States*, 220 U. S. 559.

It is equally clear that the purpose of the third section is to require that the safety appliances "provided for by section two of this Act" shall ultimately conform to a standard to be prescribed by the Interstate Commerce Commission, that is, that they shall be standardized, shall be of uniform size and character, and so far as ladders and hand holds are concerned, shall be placed as nearly as possible at a corresponding place on every car so that employees who work always in haste, and often in darkness and storm, may not be betrayed, to their injury or death, when they instinctively reach for the only protection which can avail them when confronted by such a crisis as often arises in their dangerous service. It is for such emergencies that these safety appliances are provided,—for service in those instant decisions upon which the safety of life or limb of a man so often depends in this perilous employment,—and therefore this law requires

that ultimately the location of these ladders and hand holds shall be absolutely fixed so that the employee will know certainly that night or day he will find them in like place and of like size and usefulness on all cars, from whatever line of railway or section of the country they may come. This highly important and humane purpose must not be defeated by finesse of construction such as is pressed upon our attention in the argument of this case.

To this primary purpose of protecting the life and limb of employees is added the purpose of protecting the lives of passengers and of securing the safety of property by requiring uniform standards as to other equipment of cars, such as coupling appliances, brakes and the like.

To change these safety appliances on all the cars in the country from what they were as contemplated by § 2,—“secure” but differing “in number, dimensions, location, and manner of application,”—to what they must be when standardized to meet the requirements provided for in § 3, was regarded by Congress as a work so great and so expensive that it wisely committed to the informed discretion of the Interstate Commerce Commission the power and duty of determining the length of time which the carriers should be allowed in which to accomplish it. To give this discretion to the Commission is the function, and the only function, of the proviso of § 3 and the claim that, by construction, power may be found in it to suspend § 2 is too forced and unnatural to be seriously considered.

This reading of the two sections makes them stand together as an expression of a consistent congressional purpose “to promote the safety of employees and travelers on railroads” on and after July 1st, 1911, by requiring that the safety appliances described in § 2 of the act shall be secure and efficient from that date, and by requiring as § 3 provides that these appliances shall be brought as speedily as may be to a uniform standard of location, size

and usefulness, to be prescribed by the Interstate Commerce Commission.

While the question we have considered has not been presented to this court before in precisely the form in which we have it here, yet § 2 of the act was treated by this court as in full force as of September 4, 1912, in *Texas & Pacific Ry. Co. v. Rigsby*, 241 U. S. 33, and the Supreme Court of the State of Minnesota in *Coleman v. Illinois Central R. R. Co.*, 132 Minnesota, 22, and the Supreme Court of Iowa in *Cook v. Union Pacific Ry. Co.*, 158 N. W. Rep. 521, while arriving at their conclusions by somewhat different analyses of the sections of the Act of April 14, 1910, have given to them precisely the meaning and effect which we are giving to them in this decision. It results that the judgment of the Supreme Court of Mississippi is

Affirmed.